15-6-200

TRANSCRIPT OF RECORD.

158-200

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 452.

THE DELAWARE AND HUDSON CANAL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 29, 1892.

(15,148.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 29, 1894.

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1 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Delaware and Hudson Canal Company, appellant, and The Commonwealth of Pennsylvania, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause

2 of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath been, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of September, in the year of our Lord one thousand eight hundred and ninety-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court.

[Endorsed:] Filed in supreme court, middle district, Sep. 10, 1892.

1—452

3 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Pennsylvania for the middle district thereof, wherein The Delaware and Hudson Canal Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stephen J. Field, associate justice of the supreme court of the United States, this third day of September, in the year of our Lord one thousand eight hundred and ninety-two.

STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court.

4 [Endorsed:] Filed in supreme court, middle district, Sep. 10, 1892.

Affidavit.

On this tenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, personally appeared before me, the subscriber, prothonotary of the supreme court of Pennsylvania, A. C. Stamm and makes oath that he delivered a true copy of the within citation to James A. Stranahan, deputy attorney general of the Commonwealth of Pennsylvania.

A. C. STAMM.

Sworn to and subscribed the tenth day of September, A. D. 1892.

WILLIAM PEARSON,
Prothonotary.

5 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States, hereunto annexed, as follows, to wit:

(*Copy of Appearance Docket Entry.*)

Among the records and proceedings enrolled in the court of common pleas in and for the county of Dauphin, in the Commonwealth of Pennsylvania, to No. 438, September term, 1891, is contained the following:

Copy of Appearance Docket Entry.

In Dauphin Common Pleas, September Term, 1891.

COMMONWEALTH OF PENNSYLVANIA
vs.
DELAWARE AND HUDSON CANAL COMPANY. } No. 438.

Appeal by defendant from an account settled by the auditor general and State treasurer.

Hensel; Olmsted.

Docket Entries.

August 25, 1891.—Appeal and specification of objection filed.
Sept. 18, 1891.—Bond filed.
Oct. 19, 1891.—Stipulation to try without jury filed.
Dec. 12, 1891.—Opinion and finding of the court filed, deciding that there is due the Commonwealth by the defendant the sum of six hundred eighty and $\frac{33}{100}$ dollars ($680.33) and costs.
Jan. 11, 1892.—Defendant's exceptions filed; exceptions overruled and judgment entered in accordance with opinion filed.
March 4, 1892.—Certiorari surappeal from supreme court, No. 9, May term, 1892, received and filed.
May 19, 1892.—Certified.

[Seal of Court of Common Pleas of Dauphin County.]

JOHN P. MELICK,
Prothonotary.

6 *Account.*

Delaware and Hudson Canal Co. in account with the Commonwealth of Pennsylvania, Dr.

For tax on scrip, bonds, certificates and evidences of indebtedness' per section four of the act of June 30, 1885, and section one of the act of June 1, 1889, for the year 1890, as per report herewith filed.

Nominal value of scrip, bonds, certificates and evidences of indebtedness held, owned or possessed by individual residents of Pennsylvania, or by any copartnership, unincorporated association, company, joint stock association or company, limited partnership, bank or corporation, in their own right or as trustee, agent, attorney-in-fact, or in any other capacity, $219,000.00.

Tax, three mills	$657 00
Deduct treasurer's commission	32 85
Due Commonwealth	$624 15

AUDITOR GENERAL'S DEPARMENT,
HARRISBURG, PA., *June* 10, 1891.

Settled and entered.
(Signed) JOHN A. GLENN,
For THOMAS McCAMANT,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, PA., *June* 10, 1891.

Approved:
(Signed) JNO. E. STOTT,
For HENRY K. BOYER,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *June* 11, 1891.

I hereby certify that the above is a true copy of the original remaining on file in this department.

7 Witness my hand and seal of office, the day and year aforesaid.

(Signed) JOHN A. GLENN,
[SEAL.] For THOMAS McCAMANT,
Auditor General.

Appeal.

In the matter of the account for tax on loans for the year 1890, amounting to $624.15, settled against the Delaware and Hudson Canal Company by the auditor general of Pennsylvania upon the tenth day of June, 1891, and approvedby the State treasurer upon the tenth day of June, 1891.

The said Delaware and Hudson Canal Company hereby appeals from said settlement of account to the court of common pleas of Dauphin county, and, together with a copy of said account, files the following specifications of objections thereto, agreeably to the provisions of the act of assembly in such case made and provided:

I. The fourth section of the act of June 30, 1885, does not impose any duties or liabilities upon corporations in respect of any tax upon bonds or mortgages issued by them, but applies only to persons who act in the capacity of treasurers of corporations; and there is no warrant nor authority of law for the settlement of the account hereby appealed from against the corporation appellant.

II. The tax, if any, to which bonds and mortgages are made subject by the acts of June 30, 1885, and June 1, 1889, is an annual tax upon the actual value thereof; and, before any tax can lawfully be due upon any bond or mortgage, there must have been a legal assessment or ascertainment of its value, with notice to the owner and the right of appeal. The loans of the company appellant bear different rates of interest and differ in market and actual values. Neither the company nor its officers were authorized by law to make any valuation or assessment of its bonds for taxation, nor were they

furnished with any such valuation or assessment made by any properly constituted authority. Neither the company nor its
8 officers, therefore, could lawfully have deducted any tax from any interest paid during or for the year, or any part thereof, for which the tax is charged.

III. If the act of June 30, 1885, or the act of June 1, 1889, requires that the company, or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority, or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void, because in conflict with article V of the amendments to the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty or property, without due process of law;" and also because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.

IV. The acts of June 30, 1885, and June 1, 1889, so far as they relate to the taxation of the bonds, mortgages, or other loans of the company appellant, or require the said corporation or the treasurer thereof to deduct any tax when paying interest thereon, is incomplete, inoperative, unconstitutional and void, the said act failing to provide any means for the assessment of said bonds, mortgages and loans, or for ascertaining their value, or the amount of tax to be deducted from the interest paid.

V. If the acts of June 30, 1885, and June 1, 1889, do not require an assessment or valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real, value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and in market values, and to retain the tax so calculated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." For the same reason the said acts are also void, be-
9 cause in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.

VI. The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest, require that bonds and mortgages owing by natural persons, and shares of stock in banks and other corporations, shall be taxed at their actual value. If the said acts, or any of them, require that bonds and mortgages owing by corporations shall be taxed in a different manner, that is to say, upon their nominal value, regardless of their real value, then the said act or acts are void, because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.

VII. The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant, or the treasurer thereof, to de-

duct from the interest due to its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between the said company and its creditors, and are void, because in conflict with section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of the contracts.

VIII. Neither the charter granted to the corporation appellant by the State of New York, nor the legislation under which it owns property and does business in Pennsylvania, requires or permits the said corporation to act as a collector of State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect, or become responsible for, the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is, therefore, void.

IX. All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer, and are detachable from said bonds, and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery, and the same may be owned, and often are owned, when presented for payment, by persons other than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon, and is in conflict with section 10 of article I of the Constitution of the United States, and is, therefore, void.

X. The Delaware and Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of and located in the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted, and the bonds actually issued and sold, and are payable, principal and interest; and the said interest is there actually paid to persons there doing business. The said company has no right, under its charter, to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company; and if the acts of June 30, 1885, and June 1, 1889, or either of them, require that this company, or the treasurer thereof, shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds, they impair the obligation of the charter contract between the State of New York and the said company, and also the obligation of the contract between said company and the owners of its bonds, and are therefore, void, because repugnant to paragraph 1 of section 10 of article I of the Constitu-

tion of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

XI. It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New York or upon its treasurer, being a resident of the State of
11 New York, the duty of assessing in the State of New York a tax upon bonds and mortgages issued and sold in the State of New York, upon the payment of interest made in the city of New York, nor to hold the said company, nor its treasurer, responsible for failure so to assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they or either of them shall be construed to authorize the account settled by the auditor general in this case, or any part thereof, are void, because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subjects within its territorial sovereignty and by reason of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State.

XII. In so far as they apply to the Delaware and Hudson Canal Company, the fourth section of the act of June, 30, 1885, and the first section of the act of June 1, 1889, are unconstitutional and void, because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

Harrisburg, Pa., July 17, 1891.

THE DELAWARE AND HUDSON CANAL COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

12 *Bond on Appeal.*

Know all men by these presents that we, the Delaware & Hudson Canal Company and Robert M. Olyphant and James C. Hartt, both of the city and State of New York, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of twelve hundred and forty-eight and $\frac{30}{100}$ dollars ($1,248.30), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the first day of September, A. D. 1891.

Whereas the above-bounden Delaware & Hudson Canal Company has entered in the office of the auditor general of Pennsylvania an appeal to the court of common pleas of Dauphin county from the settlement of an account for tax on loans, amounting to six hundred and twenty-four and $\frac{15}{100}$ dollars ($624.15), made by the auditor general on the 10 of June, 1891, and approved by the State treasurer on the 10 of June, 1891:

Now, the condition of this obligation is such that if the said Delaware & Hudson Canal Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation to be void and of none effect, or otherwise to be and remain in full force and virtue.

DELAWARE & HUDSON CANAL COMPANY,
By R. M. OLYPHANT, *President.*

Attest:

[Seal Delaware & Hudson Canal Co.]

F. M. OLYPHANT, *Secretary.*

R. M. OLYPHANT. [SEAL.]
JAMES C. HARTT. [SEAL.]

Signed, sealed, and delivered in presence of—
C. A. WALKER.

The security of the above bond is approved.

(Must be signed by a judge of some court in county where sureties reside.)

MORGAN JORLIEN,
Justice of Supreme Court.

Sept. 18, 1891.—The security of the within bond is approved.
JOHN B. M'PHERSON, *A. L. J.*

13 *Agreement to Try Without a Jury.*

In the Court of Common Pleas of Dauphin County, September Term, 1891.

COMMONWEALTH OF PENNSYLVANIA
vs.
DELAWARE AND HUDSON CANAL CO. } No. 438.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court to be heard and determined under the provisions of an act, entitled "An act to provide for the submission of civil cases to the decision of the court, and to dispense with trial by jury," approved the 22d day of April, 1874, subject, however, to a writ of error as in other cases, at the option of either party.

(Signed) JAS. A. STRANAHAN,
Deputy Attorney General.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

October 16th, 1891.

OFFICE OF THE DELAWARE AND HUDSON CANAL COMPANY,
NEW YORK, *November 24th*, 1890.

To the auditor general of Pennsylvania:

In accordance with the provisions of the fourth section of the act of June 30, 1885, and the first section of the act of June 1, 1889, and the requirements of your department, as treasurer of the Delaware and Hudson Canal Company, I make the following report of the indebtedness of said company for the year 1890, and I do also assess each and every of the scrip, bonds, and other evidence of indebtedness at its nominal value, as per schedule hereto annexed:

Nominal value of all scrip, bonds, mortgages, promissory notes (except notes discounted or negotiated by banks, savings institutions or trust companies), penal or single bills, judgments, or other evidences of indebtedness held or possessed by any person, persons, copartnership, unincorporated association, company, joint stock association or company, limited partnership, bank or corporation in his, her, their, or its own right, or as active trustee, agent, attorney-in-fact, or in any other capacity for the use, benefit or advantage of any other person, association, partnership, company or corporation—$15,378,000.

Nominal value of said indebtedness owned by non-residents of Pennsylvania—$8,554,000.

Nominal value of said indebtedness held, owned or possessed by individual residents of Pennsylvania, or by any copartnership, unincorporated association, company, joint stock association or company, limited partnership, bank or corporation, in their own right or as trustee, agent, attorney-in-fact, or in any other capacity—$1,163,000.

Nominal value of said indebtedness held, owned or possessed by persons whose residence is unknown—$5,661,000.

(Signed) JAMES C. HARTT, *Treasurer.*

STATE OF NEW YORK, }
County of New York, } *ss:*

On this twenty-fourth day of November, A. D. 1890, personally appeared before me, a notary public in and for the county aforesaid, James C. Hartt, treasurer of the Delaware and Hudson Canal Company, who, being duly sworn according to law, did depose and say that the foregoing report and the attached schedule of indebtedness, with the amounts owned by residents and non-residents of Pennsylvania, as nearly as the same can be ascertained, is correct and true.

(Signed) JAMES C. HARTT, *Treasurer.*

Sworn to and subscribed before me the day and year aforesaid.
F. M. OLYPHANT,
Notary Public, N. Y. County.

SCHEDULE.

Corporate Loans of the Delaware and Hudson Canal Company for the Year 1890.

Description of debt.	Total amount.	Amount held, owned, or possessed by individual residents of Pennsylvania.	Amount held and owned by corporations of Pennsylvania.	Amount held or possessed by domestic corporations or limited partnerships or individual residents as trustee, agent, or attorney-in-fact or any other capacity.	Amount owned by non-residents.	Amount held or owned by persons whose residence cannot be ascertained.	Rate of interest.	Dates when interest is payable.
Loan of 1891	$4,988,000	$81,000	$336,000	.....	$3,906,000	$665,000	7 p. c.	Jan. and July.
Loan of 1887–'91	561,000	3,000	.....	.....	505,000	53,000	7 p. c.	May and Nov.
Loan of 1894, reg.	1,860,000	103,000	226,000	.....	1,319,000	42,000	7 p. c.	April and Oct.
" coupon	2,969,000	12,000	337,000	.....	384,000	2,236,000	7 p. c.	" "
Loan of 1917, reg.	2,690,000	20,000	45,000	.....	2,440,000	185,000	7 p. c.	Mar. and Sept.
" coupon	2,310,000	.....	.....	.....	.....	2,310,000	7 p. c.	" "
	$15,378,000	$219,000	$944,000	.....	$8,554,000	$5,661,000		

16 *Opinion of the Court of Common Pleas.*

By the COURT:

By agreement of the parties, this case was tried by the court without the intervention of a jury, agreeably to the provisions of the act of April 22d, 1874. We find the facts to be as follows:

1. The Delaware and Hudson Canal Company is a corporation chartered early in the present century by the State of New York, having, by various statutes of that State, authority to cut a canal between the Delaware and Hudson rivers and to build certain railroads, and to do various other things; the principal purpose being to enable it to supply the New York market with what is therein described as "stone coal," now better known as anthracite coal, from the Pennsylvania coal region. Its chief office and treasury are in the city of New York. Its treasurer and other principal officers are, all of them, residents of said city. It has complied with the requirements of the act of April 22d, 1874, (P. L. 108) and obtained from the secretary of the Commonwealth the required certificate.

2. By certain Pennsylvania statutes the company acquired the privilege of extending its canal into Pennsylvania and constructing and maintaining certain railways and such other
17 devices as may be found necessary to provide for and facilitate the transportation of coal to the canal, and to do certain other things therein specified.

3. Since the year 1825 the company has been doing business in Pennsylvania in pursuance of authority of the statutes above mentioned.

4. So far as the State of Pennsylvania is concerned, the canal and railroads of the company defendant are used chiefly in the transportation of anthracite coal from Pennsylvania into other States.

5. In the fifth section of the act of April 1, 1825, (P. L. 141) which is one of the acts authorizing the company to do business in Pennsylvania, it is provided "that the property of the said company, whether real or personal, within this State, shall at all times be liable for its debts and subject to taxation in like manner as similar property held by an individual or by a corporation now is or may be; and the said company shall, under oath or affirmation of the president and treasurer, report to the legislature, when required so to do, the amount of capital which it may have invested within this State, under pain of forfeiting the rights and privileges hereby granted for neglecting or refusing so to do; and, moreover, the State of Pennsylvania shall, at all times, by its agent or attorney duly appointed, have a right to examine the books, accounts and vouchers of the said company in relation to such reports." Such taxes have been regularly paid and there is no other provision or requirement upon the subject of taxation to be found in any of the special statutes in pursuance of which the works of the company were constructed in this State. Neither those statutes nor the New

York statutes, which constitute the charter of the company, contain any provision requiring it to collect and be responsible for any tax upon bonds and mortgages issued by it, whether held by residents of Pennsylvania or otherwise, nor requiring it to deduct any Pennsylvania State tax from interest paid upon such mortgages; but the said statutes are, all of them, entirely silent upon that subject.

18 6. In pursuance of authority contained in the New York statutes, which constitute its charter, the company has heretofore issued mortgages to the amount of $15,378,000. The bonds secured by them were originally issued and sold in the State of New York to non-residents of Pennsylvania; but, in the year 1890, bonds to the amount of $219,000 were held and owned by individuals residing in Pennsylvania. By the terms of the bonds and mortgages whereby they are secured, the principal and interest is payable in the city and State of New York at the general office of the company; and the interest is, and was, in 1890, there paid by the treasurer of the company, who is a resident of the State of New York. The said bonds were all issued prior to the year 1885. They are all coupon bonds. Neither bond, nor coupon, nor mortgage, contains any provision for the withholding from the interest of any State tax, or for any deduction whatever from the interest required by the terms of said mortgage, bonds and coupons to be paid.

7. On the tenth of June, 1891, the auditor general of Pennsylvania settled and entered, and the State treasurer approved, an account against the company for $624.15, being the tax for the year 1890, charged at three mills upon the nominal value of the $219,000 of bonds held and owned by residents of Pennsylvania, as aforesaid, less a commission of $32.85, which tax is claimed to be due from said company to the Commonwealth under section 4 of the act of June 30, 1885, and section 1 of the act of June 1, 1889. From this settlement of its account the company duly appealed to this court.

8. In paying interest upon its bonds in 1890, the company did not, neither did its treasurer, withhold therefrom any Pennsylvania State tax, as required by section 4 of the act of June 30, 1885.

9. Bonds and mortgages issued by individuals; and also, when owned by residents of Pennsylvania, those issued by foreign corporations not doing business in the State, are assessed and taxed for State purposes in the hands of the owners in the taxing districts in which they reside at their actual value in cash for which they would separately and *bona fide* sell.

19 *Discussion.*

In each of the acts of June 30, 1885, and June 1, 1889, the first section makes all bonds and mortgages, &c., taxable annually at the rate of three mills on each dollar of the value thereof. Such evidences of indebtedness, when issued by individuals, or by foreign corporations not doing business in Pennsylvania, are, when held by residents of Pennsylvania, required by various statutes, to be assessed by the local assessors of the district in which the owners resides, at their actual value in cash for which they would separately

bona fide sell, but, in the case of bonds issued by a domestic corporation or by foreign corporations doing business in this State, a different method of assessment and collection is provided by section 4 of the act of June 30, 1885, which requires that the treasurer of each corporation shall, upon payment of interest, assess a three-mill tax upon the nominal or par value of the bond and withhold the same from the interest paid to the bondholder; and, instead of paying it to the bondholder, turn it over into the State treasury of Pennsylvania. Although the act designated the treasurer as the person to assess and collect the tax, the account is rightly settled against the corporation. Said Clark, J., "We are clear in our convictions that if there is any constitutional authority to impose the tax under the fourth section of the act, the settlement by the accounting officer was rightly made against the company. The act constitutes the company, or its treasurer as such, the collector of the tax, and, upon failure to discharge the duty imposed by law, the settlement is properly made against the company whose servant he is, as in the case of the default of any other officer of the government upon whom a like duty is imposed. The obligation rests upon the company; but, as the company can only act through its officers, the default of the officers is a scheme for the default of the company and the penalty is visited upon them." Com. *vs.* Del. Div. Canal Co., 123 Pa., 593–618. The constitutionality of the fourth section of the act of 1885, as applied to domestic corporations, is affirmed in Com. *vs.* Del. Div. Canal Co., *supra*; Com. *vs.* Lehigh Valley R. R. Co., 129 Pa., 429; and the competency of the legislature of the State to impose upon foreign corporations doing business here the duty, upon payment of interest upon their corporate bonds held by resident holders, to deduct and return the State tax, was considered and affirmed in Com. *vs.* N. Y., L. E. & W. R. R. Co., 129 Pa., 463. We therefore overrule all the objections specified in defendant's appeal, and declare the following

Conclusions of Law.

1. Although section 4 of the act of 1885 designates the treasurer as the person to assess and collect the tax from bondholders, nevertheless, upon his failure to do so, an account for the tax is properly settled against the corporation itself.

2. It is competent for the legislature of Pennsylvania to require that foreign corporations doing business in this State shall become responsible for the assessment and collection of the tax imposed by law upon bonds issued by them and owned by residents of Pennsylvania.

3. The act of June 30, 1885, does not violate any provision of the Constitution of Pennsylvania.

4. The act of June 30, 1885, is not in conflict with article V of the amendments to the Constitution of the United States.

5. The act of June 30, 1885, is not in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.

6. The act of June 30, 1885, does not impair the obligation of the charter contract between the State of New York and the said company, nor the obligation of the contract between said company and the owners of its bonds, and the said act is not in conflict with paragraph 1 of section 10 of article I of the Constitution of the United States.

7. The act of June 30, 1885, is not in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with the foreign nations and among the several States and with the Indian tribes.

It follows from these conclusions that the Commonwealth is entitled to recover:

21	Tax	$624 15
	Interest, at 12 per cent., from August 10, 1891, to December 10, 1891	24 97
	Attorney general's commission	31 21
	Total	$680 33

For which amount the prothonotary is directed to enter judgment if exceptions are not filed as required by law.

(Signed) J. W. SIMONTON, *P. J.*

Defendant's Exceptions.

This case having been tried by the court without a jury, under the act of April 22, 1874, (P. L. 109) defendant files the following exceptions to the decision of the court:

1. The learned court erred in its first conclusion of law, which was as follows, viz:

"Although section 4 of the act of 1885 designates the treasurer as the person to assess and collect the tax from bondholders, nevertheless, upon his failure to do so, an account for the tax is properly settled against the corporation itself."

2. The learned court erred in its second conclusion of law, which was as follows, viz:

"It is competent for the legislature of Pennsylvania to require that foreign corporations doing business in this State shall become responsible for the assessment and collection of the tax imposed by law upon bonds issued by them and owned by residents of Pennsylvania."

3. The learned court erred in its third conclusion of law, which was as follows, viz:

"The act of June 30, 1885, does not violate any provision of the constitution of Pennsylvania."

4. The learned court erred in its fourth conclusion of law, which was as follows, viz:

22 "The act of June 30, 1885, is not in conflict with article V of the amendments to the Constitution of the United States."

5. The learned court erred in its fifth conclusion of law, which was as follows, viz:

"The act of June 30, 1885, is not in conflict with section 1 of article XIV of the amendments to the Constitution of the United States."

6. The learned court erred in its sixth conclusion of law, which was as follows, viz:

"The act of June 30, 1885, does not impair the obligation of the charter contract between the State of New York and the said company, nor the obligation of the contract between said company and the owners of its bonds; and the said act is not in conflict with paragraph 1 of section 10 of article I of the Constitution of the United States."

7. The learned court erred in its seventh conclusion of law, which was as follows, viz:

"The act of June 30, 1885, is not in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

8. The learned court erred in not sustaining the first specification of objection contained in defendant's appeal, as follows, viz:

"The fourth section of the act of June 30, 1885, does not impose any duties or liabilities upon corporations in respect of any tax upon bonds or mortgages issued by them, but applies only to persons who act in the capacity of treasurers of corporations; and there is no warrant nor authority of law for the settlement of the account hereby appealed from against the corporation appellant."

9. The learned court erred in not sustaining the third specification of objection contained in defendant's appeal, which specification was as follows, viz:

23 "If the act of June 30, 1885, or the act of June 1, 1889, requires that the company, or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority, or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void, because in conflict with article V of the amendments to the Constitution of the United States, which provides that 'no person shall be * * * deprived of life, liberty or property without due process of law.' And also because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States."

10. The learned court erred in not sustaining the fifth specification of objection contained in defendant's appeal, as follows, viz:

"If the acts of June 30, 1885, and June 1, 1889, do not require an assessment or valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real, value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and in market values, and to retain the tax so calculated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of article IX of the constitution of Pennsylvania, which

requires that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' For the same reason the acts are also void, because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States."

11. The learned court erred in not sustaining the sixth specification of objection contained in defendant's appeal, as follows, viz:

"The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest, require that bonds and mortgages owing by natural persons, and shares of stock in banks and other corporations, shall be taxed at their actual value. If the said acts, or any of them, require that bonds and mortgages owing by corporations shall be taxed in a different manner, that is to say, upon their nominal, regardless of their
24 real, value, then the said act or acts are void, because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States."

12. The learned court erred in not sustaining the seventh specification of objection contained in defendant's appeal, which specification was as follows, viz:

"The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant, or the treasurer thereof, to deduct from the interest due to its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between the said company and its creditors, and are void, because in conflict with section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts."

13. The learned court erred in not sustaining the eighth specification of objection contained in defendant's appeal, which was as follows, viz:

"Neither the charter granted to the corporation appellant by the State of New York, nor the legislation under which it owns property and does business in Pennsylvania, requires or permits the said corporation to act as a collector of State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect, or become responsible for, the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of artical I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is, therefore, void."

14. The learned court erred in not sustaining the ninth specification of objection contained in defendant's appeal, which was as follows, viz:

"All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer and are detachable from said bonds and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery, and the same may be owned and often are owned, when presented for payment, by persons

25 other than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon, and is in conflict with section 10 of article I of the Constitution of the United States, and is, therefore, void."

15. The learned court erred in not sustaining the tenth specification of objection contained in defendant's appeal, which was as follows, viz:

"The Delaware and Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of, and located in, the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted, and the bonds actually issued and sold, and are payable, principal and interest; and the said interest is there actually paid to persons there doing business. The said company has no right under its charter to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company. And if the acts of June 30, 1885, and June 1, 1889, or either of them, require that this company, or the treasurer thereof, shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds, they impair the obligation of the charter contract between the State of New York and the said company, and also the obligation of the contract between said company and the owners of its bonds, and are, therefore, void because repugnant to paragraph 1 of section 10 of article I of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts."

16. The learned court erred in not sustaining the eleventh specification of objection contained in defendant's appeal, which was as follows, viz:

"It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New York or upon its treasurer, being a resident of the State of New York, the duty of assessing in the State of New York
26 a tax upon bonds and mortgages issued and sold in the State of New York, upon the payment of interest made in the city of New York, nor to hold the said company nor its treasurer responsible for failure so to assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they or either of them shall be construed to authorize the amount settled by the auditor general in this case, or any part thereof, are void because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subjects within its territorial sovereignty and by reason

of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State."

17. The learned court erred in not sustaining the twelfth specification of objection contained in defendant's appeal, which was as follows, viz:

"In so far as they apply to the Delaware and Hudson Canal Company, the fourth section of the act of June 30, 1885, and the first section of the act of June 1, 1889, are unconstitutional and void, because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes."

18. The learned court erred in directing judgment to be entered in favor of the Commonwealth and against the defendant for $680.33.

19. The learned court erred in not directing judgment to be entered in favor of defendant.

Harrisburg, Pa., January 7, 1892.

THE DELAWARE & HUDSON CANAL COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

Order of the Court on Defendant's Exceptions.

And now, to wit, January eighth, 1892, the above exceptions are overruled and judgment is directed to be entered in accordance with the opinion heretofore filed.

(Signed) J. W. SIMONTON, *P. J.*

And now, to wit, January 11, 1892, defendant excepts to the above judgment, and at its request exceptions sealed.

(Signed) J. W. SIMONTON, *P. J.* [SEAL.]

27 *Supreme Court of Pennsylvania Docket Entries.*

At a supreme court of the State of Pennsylvania sitting in and for the middle district, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of January, A. D. 1892.

Present: The Honorable Edward M. Paxson, chief justice; James P. Sterrett, Henry Green, Henry W. Williams, J. B. McCollum, James T. Mitchell, and Christian Heydrick, justices, and William Pearson, prothonotary, of said court.

Among the records of the said supreme court of Pennsylvania in and for the middle district, to May term, 1892, No. 9, it is contained as follows, to wit:

Docket Entries.

COMMONWEALTH OF PENNSYLVANIA *vs.* DELAWARE & HUDSON CANAL COMPANY, Appellant. } Certiorari to the Court of Common Pleas of Dauphin County. No. 438. Sept. Term, 1891.

March 4th, 1892.—Precipe, aff., app., & recog. filed.

Eo die.—Exit writ of cert., returnable *sec. reg.*

May 27th, 1892.—Record returned and filed.
May 30th, 1892.—Assignments of error filed.
May 31st, 1892.—Argued.
July 13th, 1892.—Judgment affirmed *per curiam*.
July 26th, 1892.—Record remitted per self.
Sept. 10th, 1892.—Petition for allocatur of writ of error from the Supreme Court of the United States.
Allocatur of said writ by Hon. Stephen J. Field, justice of said court, and said writ of error received and filed.
Eo die.—Citation from the said Hon. Stephen J. Field and affidavit of service thereof on Hon. James A. Stranahan, deputy attorney general, received and filed.
Sept. 10th, 1892.—Writ of error bond in the sum of $1,400 received and filed.
Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON.

28 *Precipe.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA *vs.* DELAWARE & HUDSON CANAL COMPANY, Appellant.	Certiorari to the Court of Common Pleas for the County of Dauphin, of September Term, 1891. No. 438.

Issue certiorari to the court of common pleas of the county of Dauphin to bring up record and proceedings in a certain action in said court, No. 438, Sept. term, 1891, wherein Commonwealth of Pa. was plaintiff and Delaware & Hudson Canal Co. was defendant, returnable to next term, *sec. reg.*

M. E. OLMSTED,
Attorney for Delaware & Hudson Canal Co.

To William Pearson, proth'y sup. court, middle district.

29 *Appeal.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, *vs.* DELAWARE & HUDSON CANAL COMPANY, Defendant.	Court of Common Pleas of Dauphin County, September Term, 1891. No. 438.

Enter appeal on behalf of defendant from the judgment of the court of common pleas of the county of Dauphin.
To Wm. Pearson, Esq., proth'y sup. c't, middle district.

(*Affidavit.*)

COUNTY OF DAUPHIN, *ss:*

M. E. Olmsted, attorney, being duly sworn, saith that the above appeal is not intended for delay.

M. E. OLMSTED.

Sworn and subscribed this 4th day March, A. D. 1892.

WILLIAM PEARSON,
Prothonotary.

30 *Recognizance.*

In the Supreme Court of Pennsylvania for the Middle District.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff,
vs.
DELAWARE & HUDSON CANAL COMPANY. } No. 438.

Appeal of defendant from the court of common pleas for the county of Dauphin, of September term, 1891.

We, A. C. Stamm and Russell P. Butler, severally acknowledge to owe the above-named Commonwealth of Pa. the sum of one hundred dollars upon condition that the above-named canal company prosecute its appeal with effect, and if the judgment be affirmed or the appeal be discontinued or non-prossed that said Co. pay the cost adjudged or accruing upon such appeal and all other costs that may be awarded upon such appeal, or else we will do it for it.

A. C. STAMM.
R. P. BUTLER.

Taken and acknowledged this 4th day of March, A. D. 1892.

WILLIAM PEARSON.

31 *Writ of Certiorari.*

MIDDLE DISTRICT OF PENNSYLVANIA, *set:*

[Seal of Supreme Court of Pennsylvania.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

We, being willing for certain causes to be certified of the appeal of the Delaware and Hudson Canal Co. from the judgment of said court in a certain cause wherein The Commonwealth of Pennsylvania is plaintiff and said Delaware & Hudson Canal Co. is defendant, to No. 438, Sept. T., 1891, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court, at a supreme court to be holden at Harrisburg, in and for the middle district of said Commonwealth, on the 21st Monday following 1st Mon. of Jan., 1892, being the 1st Monday of the term, so full and

entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon what of right and according to our laws of the said State ought.

Witness the Hon. Edward M. Paxson, doctor of laws, chief justice of our supreme court, at Harrisburg, the 4th day of March, in the year of our Lord one thousand eight hundred and ninety-two, and of the Commonwealth the 116th.

HOWARD L. CALDER,
Deputy Prothonotary.

32 [Endorsed:] No. 9. May term, 1892. Supreme court, middle district. Com. of Penna. *vs.* Delaware & Hudson Canal Co., appellant. 438. Sept. T., 1892. Certiorari. Surappeal to the court of common pleas for the county of Dauphin. Returnable the 21st Mon. following 1st Monday of January, 1892. "Rule on the appellee to appear and plead on the return day of the writ." N. B.—Ten days' notice to the parties or their counsel below necessary to compel an appearance. Filed March 4, '92.

Mar. 8th, 1892.—Service of this writ hereby accepted.
JAS. A. STRANAHAN,
Deputy Attorney General.

(Endorsement on writ of certiorari.)

The record and process, with all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send, as within we are commanded.

JOHN B. McPHERSON, *A. L. J.* [L. S.]

I certify that recognizance for costs in $100.00, with A. Carson Stamm and R. P. Butler as bail, has been duly filed in the supreme court.

HOWARD L. CALDER,
Deputy Prothonotary.

33 *Assignments of Error.*

I. The learned court erred in overruling appellant's first exception, which exception was as follows, viz:

"1. The learned court erred in its first conclusion of law, which was as follows, viz:

'Although section 4 of the act of 1885 designates the treasurer as the person to assess and collect the tax from bondholders, nevertheless, upon his failure to do so, an account for the tax is properly settled against the corporation itself.'"

II. The learned court erred in overruling appellant's second exception, which exception was as follows, viz:

"2. The learned court erred in its second conclusion of law, which was as follows, viz:

'It is competent for the legislature of Pennsylvania to require that foreign corporations doing business in this State shall become responsible for the assessment and collection of the tax imposed by law upon bonds issued by them and owned by residents of Pennsylvania.'"

III. The learned court erred in overruling appellant's third exception, which exception was as follows, viz:

"3. The learned court erred in its third conclusion of law, which was as follows, viz:

'The act of June 30, 1885, does not violate any provision of the constitution of Pennsylvania.'"

IV. The learned court erred in overruling appellant's fourth exception, which exception was as follows, viz:

"4. The learned court erred in its fourth conclusion of law, which was as follows, viz:

34 'The act of June 30, 1885, is not in conflict with article V of the amendments to the Constitution of the United States.'"

V. The learned court erred in overruling appellant's fifth exception, which exception was as follows, viz:

"5. The learned court erred in its fifth conclusion of law, which was as follows, viz:

'The act of June 30, 1885, is not in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

VI. The learned court erred in overruling appellant's sixth exception, which exception was as follows, viz:

"6. The learned court erred in its sixth conclusion of law, which was as follows, viz:

'The act of June 30, 1885, does not impair the obligation of the charter contract between the State of New York and the said company, nor the obligation of the contract between said company and the owners of its bonds; and the said act is not in conflict with paragraph 1 of section 10 of article I of the Constitution of the United States.'"

VII. The learned court erred in overruling appellant's seventh exception, which exception was as follows, viz:

"7. The learned court erred in its seventh conclusion of law, which was as follows, viz:

'The act of June 30, 1885, is not in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

VIII. The learned court erred in overruling appellant's eighth exception, which exception was as follows, viz:

"8. The learned court erred in not sustaining the first specification of objection contained in defendant's appeal, as follows, viz:

'The fourth section of the act of June 30, 1885, does not impose any duties or liabilities upon corporations in respect of any tax upon bonds or mortgages issued by them, but applies only
35 to persons who act in the capacity of treasurers of corpora-

tions; and there is no warrant nor authority of law for the settlement of the account hereby appealed from against the corporation appellant.'"

IX. The learned court erred in overruling appellant's ninth exception, which exception was as follows, viz:

"9. The learned court erred in not sustaining the third specification of objection contained in defendant's appeal, which specification was as follows, viz:

'If the act of June 30, 1885, or the act of June 1, 1889, requires that the company, or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority, or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void, because in conflict with article V of the amendments to the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty or property, without due process of law;" and also because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

X. The learned court erred in overruling appellant's tenth exception, which exception was as follows, viz:

"10. The learned court erred in not sustaining the fifth specification of objection contained in defendant's appeal, as follows, viz:

'If the acts of June 30, 1885, and June 1, 1889, do not require an assessment or valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real, value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and in market values, and to retain the tax so calculated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." For the same reason the said acts are also void, be-
36 cause in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

XI. The learned court erred in overrulling appellant's eleventh exception, which exception was as follows, viz:

"11. The learned court erred in not sustaining the sixth specification of objection contained in defendant's appeal, as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest, require that bonds and mortgages owing by natural persons, and shares of stock in banks and other corporations, shall be taxed at their actual value. If the said acts, or any of them, require that bonds and mortgages owing by corporations shall be taxed in a different manner, that is to say, upon their nominal, regardless of their real, value, then the said act or acts are void, because in conflict

with section 1 of article XIV of the amendments to the Constitution of the United States.'"

XII. The learned court erred in overruling appellant's twelfth exception, which exception was as follows, viz:

"12. The learned court erred in not sustaining the seventh specification of objection contained in defendant's appeal, which specification was as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant, or the treasurer thereof, to deduct from the interest due to its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between the said company and its creditors, and are void because in conflict with section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts.'"

XIII. The learned court erred in overruling appellant's thirteenth exception, which was as follows, viz:

"13. The learned court erred in not sustaining the eighth specification of objection contained in defendant's appeal, which was as follows, viz:

'Neither the charter granted to the corporation appellant by the State of New York, nor the legislation under which it owns property and does business in Pennsylvania, requires or per-
37 mits the said corporation to act as a collector of State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect, or become responsible for, the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is, therefore, void.'"

XIV. The learned court erred in overruling appellant's fourteenth exception, which exception was as follows, viz:

"14. The learned court erred in not sustaining the ninth specification of objection contained in defendant's appeal, which was as follows, viz:

'All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer and are detachable from said bonds and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery; and the same may be owned and often are owned, when presented for payment, by persons other than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon, and is in conflict with section 10 of article I of the Constitution of the United States, and is, therefore, void.'"

XV. The learned court erred in overruling appellant's fifteenth exception, which was as follows, viz:

"15. The learned court erred in not sustaining the tenth specification of objection contained in defendant's appeal, which was as follows, viz:

"The Delaware and Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of and located in the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted, and the bonds actually issued and sold, and are payable, principal and in-
38 terest; and the said interest is there actually paid to persons there doing business. The said comppany has no right, under its charter, to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company; and if the acts of June 30, 1885, and June 1, 1889, or either of them, require that this company, or the treasurer thereof, shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds, they impair the obligation of the charter contract between the State of New York and the said company, and also the obligation of the contract between said company and the owners of its bonds, and are therefore, void, because repugnant to paragraph 1 of section 10 of article I of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.'"

XVI. The learned court erred in overruling appellant's sixteenth exception, which was as follows, viz:

"16. The learned court erred in not sustaining the eleventh specification of objection contained in defendant's appeal, which was as follows, viz:

'It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New York, or upon its treasurer, being a resident of the State of New York, the duty of assessing in the State of New York a tax upon bonds and mortgages issued and sold in the State of New York, upon the payment of interest made in the city of New York, nor to hold the said company nor its treasurer responsible for failure to assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they or either of them shall be construed to authorize the account settled by the auditor general in this case, or any part thereof, are void, because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subjects within its territorial sovereignty and by reason of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State.'"

XVII. The learned court erred in overruling appellant's seventeenth exception, which exception was as follows, viz:

39 "17. The learned court erred in not sustaining the twelfth specification of objection contained in defendant's appeal, which was as follows, viz:

'In so far as they apply to the Delaware and Hudson Canal Company, the fourth section of the act of June, 30, 1885, and the first section of the act of June 1, 1889, are unconstitutional and void, because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes.'"

XVIII. The learned court erred in directing judgment to be entered in favor of the Commonwealth and against the appellant for $680.33.

XIX. The learned court erred in not directing judgment to be entered in favor of the appellant and against the Commonwealth.

40 (*Copy of Opinion of Supreme Court of Pennsylvania.*)

Middle District, May Term, 1892.

COMMONWEALTH OF PENNSYLVANIA
vs.
DELAWARE & HUDSON CANAL COMPANY, Appellant. } No. 9.

Per Curiam:

The judgment is affirmed upon the opinion of the learned judge of the court below.

(*Return to Writ of Error from the Supreme Court of the United States.*)

And now here, on this day, to wit, September 10th, 1892, the said The Delaware & Hudson Canal Company produced to the supreme court of Pennsylvania here the writ of the United States of America for the correction of errors of and upon said premises, commanding the record and proceedings aforesaid of the judgment aforesaid so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, within 30 days from the date thereof, to wit, Sept. 3d, 1892; which writ of error is hereunto annexed.

In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided a transcript of the record and proceedings of the judges aforesaid, as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

41 *Petition for Allocatur.*

To the Honorable Stephen J. Field, Justice of the Supreme Court of the United States:

The petition of the Delaware & Hudson Canal Company respectfully showeth—

That your petitioner is a corporation created by and existing under the laws of the State of New York having, by various stat-

utes of that State, authority to cut a canal between the Delaware & Hudson rivers and to build certain railroads and to do various other things.

That, by certain Pennsylvania statutes, the company acquired the privilege of extending its canal to Pennsylvania and constructing and maintaining certain railways and such other devices as might be found necessary to provide for and facilitate the transportation of coal to the canal, and to do certain other things therein specified. So far as the State of Pennsylvania is concerned the canal and railroads of the company are used chiefly in the transportation of anthracite coal from Pennsylvania into other States.

That the company's chief office and treasury are in the city and State of New York. Its treasurer and other principal officers are, all of them, residents of said State. It has complied with the requirements of the Pennsylvania statute of April 22, 1874
42 (P. L., 108), entitled "An act to prohibit foreign corporations from doing business in Pennsylvania without having known places of business and authorized agents," and has filed in the office of the secretary of the Commonwealth the statement required by said act and has obtained the certificate of the said secretary of the Commonwealth as provided for in said act.

That, by the first section of each of the Pennsylvania statutes of June 30, 1885, and June 1, 1889, there is imposed upon all bonds, mortgages, and personal property therein enumerated in the hands of individual citizens of said State a tax of three mills upon the actual value thereof annually.

That, by the fourth section of the said act of June 30, 1885, it is made the duty of the treasurer of each private corporation chartered by or doing business in Pennsylvania, upon the payment of any interest upon bonds issued by it, to assess said bonds at their nominal or par value and deduct a tax of three mills thereon from the interest paid.

That, pursuant to authority contained in its charter granted by the State of New York, your petitioner has heretofore issued bonds and mortgages to the amount of $15,378,000, all of which were outstanding during the year 1890. All of said bonds were originally issued and sold in the State of New York to non-residents of Pennsylvania, and by their terms and the terms of the mortgages
43 securing the said bonds the principal and interest is payable in the city and State of New York at the general office of the company, and the interest is and was in 1890 there paid by the treasurer of the company. The said bonds are all coupon bonds. Neither bonds, coupons, nor mortgage contain any provision for the withholding from the interest of any State tax or for any deduction whatever from the interest required by the terms of said mortgages, bonds, and coupons to be paid, and neither the charter of the company granted by the State of New York nor the statutes of the State of Pennsylvania authorizing the company to do business in that State contain any provision requiring it to collect and be responsible for any tax upon bonds and mortgages issued by it, whether held by residents of Pennsylvania or otherwise, nor requiring it to

deduct any Pennsylvania State tax from interest paid upon such bonds and mortgages.

And during the year 1890 your petition, in paying interest upon bonds and mortgages issued by it and held by individual residents of Pennsylvania, did not deduct therefrom any sum whatever as tax, but paid the said interest in full.

That for the year 1890 the treasurer of your petitioner made report to the auditor general, setting forth the company's total indebtedness to be as heretofore stated, viz: $15,378,000, of which, as nearly as could be ascertained, $219,000 was held and owned during said year by individuals residing in Pennsylvania.

That thereupon the auditor general and State treasurer
44 of Pennsylvania settled an account against your petitioner for a tax of three mills upon the nominal or par value of said $219,000 of indebtedness, said tax amounting to $624.15; from which account, agreeably to the laws of Pennsylvania, your petitioner appealed to the court of common pleas of Dauphin county, to No. 438, September term, 1891, denying the right of the Commonwealth to collect any part of the tax claimed. The case came on for trial and the court directed judgment to be entered in favor of the Commonwealth and against your petitioner for tax upon said $219,000 of bonds.

That to said decision your petitioner filed exceptions, among which were the following:

"The learned court erred in not sustaining the third specification of objection contained in defendant's appeal, which specification was as follows, viz:

'If the act of June 30, 1885, or the act of June 1, 1889, requires that the company or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void because in conflict with article V of the amendments to the Constitution of the United States, which provides that "no person shall be * * * deprived of life, liberty, or property without due process of law," and also because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

"The learned court erred in not sustaining the fifth specification of objection contained in defendant's appeal, as follows, viz:

'If the acts of June 30, 1885, and June 1, 1889, do not require an assessment and valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real,
45 value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and market values, and to retain the tax so calculated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon

the same class of subjects within the territorial limits of the authority levying the tax." For the same reason the acts are also void because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'

"The learned court erred in not sustaining the sixth specification of objection contained in defendant's appeal, as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest require that bonds and mortgages owing by natural persons and shares of stock in banks and other corporations shall be taxed at their actual value. If the said acts or any of them require that bonds and mortgages owing by corporations shall be taxed in a different manner—that is to say, upon their nominal, regardless of their real, value—then the said act or acts are void because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'

"The learned court erred in not sustaining the seventh specification of objection contained in defendant's appeal, as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant or the treasurer thereof to deduct from the interest due to its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between the said company and its creditors and are void because in conflict with section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts.'

"The learned court erred in not sustaining the eighth specification of objection contained in defendant's appeal, which was as follows, viz:

'Neither the charter granted to the corporation appellant by the State of New York nor the legislation under which it owns property and does business in Pennsylvania requires or permits the said corporation to act as a collector of State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect or become re-
46 sponsible for the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is therefore void.'

"The learned court erred in not sustaining the ninth specification of objection contained in defendant's appeal, which was as follows, viz:

'All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer and are detachable from said bonds and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery, and the same may be owned and often are owned when presented for payment by persons other

than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon and is in conflict with section 10 of article I of the Constitution of the United States, and is therefore void.'

"The learned court erred in not sustaining the tenth specification of objection contained in defendant's appeal, which was as follows, viz:

'The Delaware and Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of and located in the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted and the bonds actually issued and sold and are payable, principal and interest, and the said interest is there actually paid to persons there doing business. The said company has no right under its charter to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company; and if the acts of June 30, 1885, and June 1, 1889, or either of them require that this company or the treasurer thereof shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds they impair the obligation of the charter contract between the State of New York and the said company, and also the obligation of the contract between said company and the owners of its bonds, and are therefore void
47 because repugnant to paragraph 1 of section 10 of article I of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.'

"The learned court erred in not sustaining the eleventh specification of objection contained in defendant's appeal, which was as follows, viz:

'It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New York or upon its treasurer, being a resident of the State of New York, the duty of assessing in the State of New York a tax upon bonds and mortgages issued and sold in the State of New York upon the payment of interest made in the city of New York, nor to hold the said company or its treasurer responsible for failure so to assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they or either of them shall be construed to authorize the account settled by the auditor general in this case or any part thereof, are void because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subjects within

its territorial sovereignty and by reason of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State.'

"The learned court erred in not sustaining the twelfth specification of objection contained in defendant's appeal, which was as follows, viz:

'In so far as they apply to the Delaware & Hudson Canal Company, the fourth section of the act of June 30, 1885, and the first section of the act of June 1, 1889, are unconstitutional and void because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

That all of said exceptions filed by your petitioner were overruled by said court of common pleas of Dauphin county and judgment therein entered for tax upon said $219,000 of bonds, with interest at twelve per cent. per annum and five per cent. attorney general's commission, amounting in the whole to $680.33.

48 That your petitioner appealed from said judgment to the supreme court of Pennsylvania, to number 9, May term, 1892, in the middle district thereof, and among its assignments of error included the overruling of the aforesaid exceptions.

That the supreme court of Pennsylvania refused to sustain said assignments of error, and on the thirteenth day of July, A. D. 1892, affirmed the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of said court is final.

That the judgment of said court, as already shown, necessarily involved the decision of a Federal question, and the said decision is in favor of the State and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (herewith presenting a bond, with security for approval) prays that a writ of error may be allowed to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the cita-

49 tion to defendant may accompany the same; and it will ever pray, &c.

Harrisburg, Pa., Aug. 30, 1892.

DELAWARE & HUDSON CANAL COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

50 [Endorsed:] Copy. 9. May term, 1892. Commonwealth of Pennsylvania *vs.* Delaware & Hudson Canal Co., appellant. Filed in supreme court Sep. 10, 1892. Middle district.

51 *Writ of Error Bond.*

Know all men by these presents that we, The Delaware and Hudson Canal Company, as principal, and Robert M. Olyphant and Robert Olyphant, both of the city, county, & State of New York, as sureties, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of fourteen hundred dollars ($1,400), to be paid to the said The Commonwealth of Pennsylvania or her certain attorney or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of August, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a court of common pleas in and for the county of Dauphin, State of Pennsylvania, in a suit depending in said court between The Commonwealth of Pennsylvania and The Delaware and Hudson Canal Company, a judgment was rendered against the said Delaware and Hudson Canal Company, which judgment was afterwards affirmed by the supreme court of Pennsylvania in a suit in said court, of May term, 1892, No. 9, in the middle district of said court, and the said Delaware and Hudson Canal Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Delaware and Hudson Canal Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

DELAWARE AND HUDSON CANAL COMPANY,

(Signed) By R. M. OLYPHANT, *President.* [SEAL.]
" R. M. OLYPHANT. [SEAL.]
" ROBERT OLYPHANT. [SEAL.]

Attest:
(Signed) F. M. OLYPHANT,
[SEAL.] *Secretary.*

Signed, sealed, and delivered in presence of—
(Signed) WM. R. STANETT.

Approved by—
(Signed) STEPHEN J. FIELD,
Associate Justice, Supreme Court U. S.

52 UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

I, Robert M. Olyphant, residing in the city, county, and State of New York, one of the sureties in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of New York and a freeholder therein; that I am worth double the amount of said bond over and above all my debts and liabilities and exclusive — by law exempt from execution.

(Signed) ROBERT M. OLYPHANT.

Subscribed in my presence by Robert M. Olyphant and by him sworn to before me this 31st day of August, 1892.

FRANK WALLING,
Notary Public, N. Y. Co. [SEAL.]

UNITED STATES OF AMERICA, }
State of New York, City and County of New York, } *ss:*

I, Robert Olyphant, residing in the city, county, and State of New York, one of the sureties in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of New York and a freeholder therein; that I am worth double the amount of said bond over and above all my debts and liabilities and exclusive of property by law exempt from *taxation.*

(Signed) ROBERT OLYPHANT.

Subscribed in my presence by Robert Olyphant and by him sworn to before me this 31st day of August, 1892.

FRANK WALLING,
Notary Public, N. Y. Co. [SEAL.]

53 *Certificate.*

STATE OF PENNSYLVANIA, }
County of Dauphin, } *ss:*

In testimony that the foregoing, contained on pages one to fifty-six, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in a case lately depending therein, to No. 9, May term, 1892, middle district, wherein The Delaware & Hudson Canal Company was appellant and The Commonwealth of Pennsylvania appellee, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Harrisburg, this 14th day of September, A. D. 1892.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary of Supreme Court of Pa., Middle District.

54 In the Supreme Court of the United States, October Term 1892.

DELAWARE AND HUDSON CANAL COMPANY, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA. } No. —.

Surwrit of error by the Delaware & Hudson Canal Company to the supreme court of Pennsylvania.

Assignment of Errors.

(1.) The learned court erred in not sustaining the company's ninth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

The learned court erred in not sustaining the third specification of objection contained in defendant's appeal; which specification was as follows, viz:

"If the act of June 30, 1885, or the act of June 1, 1889, requires that the company, or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority, or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void, because in conflict with article V of the amendments to the Constitution of the United States, which provides that 'no person shall be * * * deprived of life, liberty, or property without due process of law;' and also because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States."

(2.) The learned court erred in not sustaining the company's tenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

55 "The learned court erred in not sustaining the fifth specification of objection contained in defendant's appeal, as follows, viz:

'If the acts of June 30, 1885, and June 1, 1889, do not require an assessment or valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real, value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and market values, and to retain the tax so calculated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of article IX of the constitution of Pennsylvania, which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." For the same reason the acts are also void, because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

(3.) The learned court erred in not sustaining the company's eleventh exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the sixth specification of objection contained in defendant's appeal, as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest, require that bonds and mortgages owing by natural persons, and shares of stock in banks and other corporations, shall be taxed at their actual value. If the said acts, or any of them, require that bonds and mortgages owing by corporations shall be taxed in a different manner, that is to say, upon their nominal, regardless of their real, value, then the said act or acts are void, because in conflict with section 1 of article XIV of the amendments to the Constitution of the United States.'"

(4.) The learned court erred in not sustaining the company's twelfth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the seventh specification of objection contained in defendant's appeal; which specification was as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant, or the treasurer thereof, to deduct from the interest due to its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between
56 the said company and its creditors, and are void, because in conflict with section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts.'"

(5.) The learned court erred in not sustaining the company's thirteenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the eighth specification of objection contained in defendant's appeal, which was as follows, viz:

'Neither the charter granted to the corporation appellant by the State of New York, nor the legislation under which it owns property and does business in Pennsylvania, requires or permits the said corporation to act as a collector of State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect, or become responsible for, the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is, therefore, void.'"

(6.) The learned court erred in not sustaining the company's fourteenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the ninth specification of objection contained in defendant's appeal, which was as follows, viz:

'All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer and are detachable from said bonds and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery, and the same may be owned and often are owned, when presented for payment, by persons other than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon, and is in conflict with section 10 of article I of the Constitution of the United States, and is, therefore, void.'"

57 (7). The learned court erred in not sustaining the company's fifteenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the tenth specification of objection contained in defendant's appeal, which was as follows, viz:

'The Delaware & Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of, and located in, the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted, and the bonds actually issued and sold and are payable, principal and interest; and the said interest is there actually paid to persons there doing business. The said company has no right under its charter to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company. And if the acts of June 30, 1885, and June 1, 1889, or either of them, require that this company, or the treasurer thereof, shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds, they impair the obligation of the charter contract between the State of New York and the said company and also the obligation of the contract between said company and the owners of its bonds, and are, therefore, void because repugnant to paragraph 1 of section 10 of article I of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.'"

(8.) The learned court erred in not sustaining the company's sixteenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the eleventh specification of objection contained in defendant's appeal, which was as follows, viz:

'It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New

York or upon its treasurer, being a resident of the State of New York, the duty of assessing in the State of New York a tax upon bonds and mortgages issued and sold in the State of New York, upon the payment of interest made in the city of New York, nor to hold the said company nor its treasurer responsible for failure so to assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they or either of them
58 shall be construed to authorize the account settled by the auditor general in this case, or any part thereof, are void because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subjects within its territorial sovereignty and by reason of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State.'"

(9.) The learned court erred in not sustaining the company's seventeenth exception to the decision of the court of common pleas of Dauphin county; which exception was as follows, viz:

"The learned court erred in not sustaining the twelfth specification of objection contained in defendant's appeal, which was as follows, viz:

'In so far as they apply to the Delaware & Hudson Canal Company, the fourth section of the act of June 30, 1885, and the first section of the act of June 1, 1889, are unconstitutional and void, because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

(10.) The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against the Delaware & Hudson Canal Company.

(11.) The learned court erred in not reversing the judgment of the court of common pleas of Dauphin county.

To the honorable the judges of the Supreme Court of the United States:

Your petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

DELAWARE & HUDSON CANAL COMPANY,
By its attorney, MARLIN E. OLMSTED.

59 [Endorsed:] In U. S. Supreme Court, Oct. term, 1892. No. —. Delaware & Hudson Canal Company (plaintiff in error) *vs.* Commonwealth of Pennsylvania. Assignment of errors.

60 In the Supreme Court of the United States.

DELAWARE & HUDSON CANAL COMPANY, Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA.	No. 452.	October Term, 1894.

And now, to wit, September 22nd, 1894, it is hereby mutually agreed that the Pennsylvania statutes of April 21, 1825, February 9, 1826, and April 5, 1826, full, true, and correct copies of which are hereunto annexed and marked, respectively, Exhibits "A," "B," & "C," are the statutes referred to in the second and third findings of fact by the trial court (court of common pleas of Dauphin county).

That the acceptance by the Delaware & Hudson Canal Company of the provisions of the aforesaid act of April 21, 1825, as required by the sixth section thereof, was duly filed in the office of the governor of Pennsylvania on the 21st day of June, 1825.

That in the act entitled "An act to improve the navigation of the river Lackawaxen," passed March 13, 1823, to which the aforesaid act of April 21, 1825, is a supplement, it was in the 10th section provided that the contemplated improvements should not be operated nor toll charged thereon until after the appointment by the governor of Pennsylvania of three skillful, judicious, and disinterested persons, who were to view and examine the same and "to report to him in writing, under oath or affirmation, whether the said navigation is completed in the manner aforementioned, according to the true intent and meaning of this act, and if the report of them, or a majority of them, shall be in the affirma-
61 tive, then the governor shall, by license, under his hand and the lesser seal of this Commonwealth, permit and suffer the said Maurice Wurts, his heirs or assigns, or such person or persons as they shall from time to time appoint as toll collectors, or their deputies, to demand and receive of and from the person or persons having charge of any boat, vessel, ark, craft, or raft passing through any lock in navigation such tolls and rates" as were by said act authorized to be charged, and that upon the 24th day of November, 1828, the governor issued to the Delaware & Hudson Canal Company a license, of which a full, true, and correct copy is hereunto annexed, made part hereof, and marked "Exhibit D."

That this agreement and its exhibits shall be printed with and considered in all respects as part of the record in the above-entitled case.

JAS. A. STRANAHAN,
Deputy Attorney General of Pennsylvania.
M. E. OLMSTED,
Attorney for Delaware & Hudson Canal Company.

62 EXHIBIT A.

Chap. LXXVIII of the Laws of Pennsylvania.

A supplement to the act entitled "An act to improve the navigation of the River Lackawaxen," passed April 1st, 1825.

Whereas, by an act entitled "An act to improve the navigation of the River Lackawaxen," Maurice Wurtz, his heirs or assigns, is authorized to improve the navigation of the said stream; and whereas, by an act of the legislature of the State of New York, a company has been incorporated, by the name of "The President, Managers and Company of the Delaware and Hudson Canal Company," to make a canal from the Hudson to the Delaware river, terminating at a point near the mouth of the Lackawaxen; and whereas, the stock in the said company having been jointly subscribed by the citizens of the two States, and the improvements authorized by the said acts being essentially connected with each other, the citizens of Wayne and Pike counties have, by petition, represented to the legislature that it is desirable that those engaged in the improvement of the Lackawaxen should be able to avail themselves of the assistance of the Delaware and Hudson Canal Company, and pray the legislature to grant the necessary legislative facilities for that purpose: Therefore,

SEC. 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That, by and with the consent of Maurice Wurts, his heirs or assigns, it shall be lawful for "The President, Managers and Company of the Delaware and Hudson Canal Company" to improve the navigation of the River Lackawaxen, and any one of its branches, in the manner authorized and provided by an act entitled "An act to improve the navigation of the River Lackawaxen," passed the thirteenth
63 day of March, one thousand eight hundred and twenty-three; and, after the making of such navigation, the said company shall and may hold and enjoy the same, as fully and effectually as Maurice Wurts, his heirs or assigns, might or could do, under and subject, however, to all the provisions, conditions, restrictions, duties and obligations imposed by the said act on the said Maurice Wurts, his heirs or assigns, and under and subject to the conditions, restrictions and limitations hereinafter provided; and it shall further be lawful for the said company to purchase and hold any quantity of lands, situate at any place within ten miles of the waters of the Lackawaxen, not exceeding five thousand acres: Provided, however, that in any judicial proceeding instituted against the said company, within the jurisdiction of this State, the service of process upon any toll-gatherer, or other known agent of the said company, in the proper county, shall be as good and as available in law as if served upon the president of the company.

SEC. 2. And be it further enacted by the authority aforesaid, That the toll which the said company may enact, under the provisions

of the act to which this act is supplementary, shall not, in the whole, exceed the rate of one cent and a half per ton, per mile, on the ascertained burthen or capacity of any ark, boat or craft laden with or engaged in the transportation of stone coal; and the said company shall not enact any higher toll than is above provided for, on such arks, boats or craft, laden as aforesaid, on the works erected by them on the Delaware, between the mouth of the Lackawaxen and Carpenter's point; provided, the said arks, boats or craft laden
64 as aforesaid, shall have come down the said River Lackawaxen, and proceed down the said River Delaware, and not through the canal to be made through the State of New York, between the Hudson and Delaware, by the said company.

SEC. 3. And be it further enacted by the authority aforesaid, That the said company shall not erect any works, or make and improvements connected with the Delaware river, unless the same shall be so constructed as to leave the channel of the said river as safe and as convenient for the descent of rafts as it now is; and any boat or craft ascending the natural channel of the Delaware river, from any point or place below Carpenter's point, or descending the same to Carpenter's point, from any place above the mouth of the Lackawaxen river, shall be permitted to pass, toll free, through any locks which the said company may erect between Carpenter's point and the mouth of the Lackawaxen river. And it shall further be the duty of the said company, at each and every place where their works may be connected with the River Delaware, to erect a lock, or locks, and keep lock-tenders, so as to provide for the ascent and descent of boats and craft, as aforesaid, and without delay.

SEC. 4. And be it further enacted by the authority aforesaid, That it shall not be lawful for the said company to engage, either directly or indirectly, in the business of banking or of manufacturing within the jurisdiction of this State; nor shall this act, or any part of it, be deemed or construed to recognize or admit an exclusive jurisdiction by the State of New York, over the waters of the Delaware river, between Carpenter's point and the northern boundary of this
65 State; and if it shall appear to any future legislature of this State, after full examination by competent engineers, to be appointed by the legislature, who shall declare, in their report, the fact that the channel of the river is by any of the said works or improvements rendered less safe and convenient for navigation, as aforesaid, it shall be lawful for such legislature to repeal this law, and the privileges by this act granted shall be thereby absolutely determined.

SEC. 5. And be it further enacted by the authority aforesaid, That the property of the said company, whether real or personal, within this State, shall, at all times be liable for its debts, and subject to taxation, in like manner as similar property held by an individual or by a corporation, now is or may be; and the said company shall, under oath or affirmation of the president and treasurer, report to the legislature, when required so to do, the amount of capital which it may have invested within this State, under pain of forfeiting the rights and privileges hereby granted for neglecting or refusing so

to do; and moreover, the State of Pennsylvania shall, at all times by its agent or attorney, duly appointed, have a right to examine the books, accounts and vouchers of the said company in relation to such reports.

SEC. 6. And be it further enacted by the authority aforesaid, That this act shall be of no force or effect, unless "The President, Managers and Company of the Delaware and Hudson Canal Company," shall, under their corporate seal, notify the governor of this State of their acceptance of the same, on or before the first day of July next.

66 SEC. 7. And be it further enacted by the authority aforesaid, That if the said company shall misuse or abuse the privileges hereby granted, the legislature reserve the right to repeal this act.

67 EXHIBIT B.

A further supplement to the act entitled "An act to improve the navigation of the river Lackawaxen," passed March 13, 1823.

SEC. 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That in making the navigation authorized by the act to which this act is supplementary it shall be lawful for the "President, Managers, and Company of the Delaware and Hudson Canal Company" to construct the locks of such dimensions as the engineers of the said company shall deem most suitable and expedient: Provided, the same shall be of sufficient capacity to admit boats, arks, crafts, or other vessels of 25 tons burthen, anything in the said act to the contrary notwithstanding: Provided also, that if the said company shall reduce the locks to a standard below that fixed by the fifteenth section of the said act, then it shall not be lawful for the said company to make a slack-water navigation in the bed of the river Lackawaxen, but in lieu thereof they shall, under the provisions of the said act, and of a supplement thereto, passed April first, one thousand eight hundred and twenty-five, construct a canal navigation fed by the waters of said river or some of its branches.

SEC. 2. And be it further enacted by the authority aforesaid, That if any injury shall be done to the property of any individual whatever in the construction of the canal authorized by this act, then and in such case the owner or owners of said property shall be entitled to compensation for the injuries so done, to be recovered from the said President, Managers, and Company of the Delaware and Hudson Canal Company, the damages to be estimated in the mode
68 prescribed in the fourth section of the act entitled "An act to improve the navigation of the river Lackawaxen," passed the thirteenth of March, one thousand eight hundred and twenty-three.

SEC. 3. And be it further enacted by the authority aforesaid, That the said company shall, in the month of January in each and every

year, make a full and complete report to this legislature of the amount of tolls taken upon the canal within the State of Pennsylvania, the dividends declared by the company within the year, and of the profits reserved as a contingent or surplus fund, and upon their refusal or neglect so to do, the rights and privileges hereby granted to be null and void.

SEC. 4. And be it further enacted by the authority aforesaid, That the water which may be taken out of the river Lackawaxen or any of its branches to feed the canal hereby authorized to be made shall be discharged into the river Delaware at or near the mouth of the river Lackawaxen.

69 EXHIBIT C.

A further supplement to an act entitled "An act to improve the navigation of the river Lackawaxen," passed March 13, 1823.

SEC. 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be lawful for the President, Managers and Company of the Delaware and Hudson Canal Company to construct and maintain such railways or other devices as may be found necessary to provide for and facilitate the transportation of coal to the canal by them to be constructed: Provided, that no railway hereby authorized to be made shall be extended further than from the coal beds owned by the said company to the forks of the Dyberry, on the west branch of the river Lackawaxen, or from the coal beds aforesaid to that point on the Wallenpaupeck branch of the river Lackawaxen where it is crossed by the Easton and Belmont turnpike road, and the better to effect that object, when it shall be necessary for the said company to occupy and use any land and materials, and the parties cannot agree in relation thereto, the same course shall be pursued as is authorized and provided by the fourth and fifth sections of the act to which this act is a supplement.

SEC. 2. And be it further enacted by the authority aforesaid, That every such railway or device shall be so constructed by the said company as not to obstruct or impede the free use of any public or private laid out road or highway which may cross or enter at the same, and in all places where such railroad or device may cross or in any way interfere with any road as aforesaid it shall be the duty of the said company to enable all persons travelling such road as aforesaid to cross or pass such railway or device by a causeway
70 or some other suitable and convenient means, to be provided and maintained by the said company, and if the said company shall neglect or refuse to provide such causeway or other suitable means, or, where provided, to maintain the same in good repair when required by the parties interested, they shall be liable to pay a penalty of ten dollars for every day the same shall be so neglected or refuse to be provided or maintained, to be recovered by the supervisor of the township or by the turnpike companies, as

the case may be, with costs, for the use of the township or of such companies, as debts of like amount are by law recoverable, and shall, moreover, be liable to an action or actions at the suit of any person who may be aggrieved thereby, and the service of process upon any officer or agent of the said company shall be as good and as available in law — if served upon the president thereof.

SEC. 3. And be it further enacted by the authority aforesaid, That for the accommodation of all persons owning or possessing lands through which any such railroad or device may pass, it shall be the duty of the said company, where required by the occupant of such land, to make or cause to be made a good and sufficient causeway or provide other suitable means whenever the same shall be necessary, to enable the occupant of such land to cross or pass over the same with wagons, carts and implements of husbandry, as occasion may require: Provided, however, that the said company shall in no case be required to make or cause to be made more than one such causeway or passage through each plantation or lot of land or two if a second shoulf be found necessary for the accommodation of any one person possessing land through which
71 any such railway or device may pass; and if the said company shall neglect or refuse to provide such causeway or passage or to keep the same in good repair the said company shall be liable to pay any person aggrieved thereby all damages sustained by such person in consequence of such refusal or neglect, to be sued for and recovered before any magistrate or any court having cognizance thereof, and the service of process on any officer or agent of said company shall be as good and available in law as if served on the president thereof.

SEC. 4. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully and knowingly break, injure, or destroy any railroad or device or any part thereof or any work appurtenant thereto erected under the provisions of this act he, she, or they so offending shall forfeit and pay to the said company three times the actual damages sustained, to be sued for, and recovered, with costs of suit, by action of debt before a justice of the peace or any court of competent jurisdiction in the name and to the use of the said company.

SEC. 5. And be it further enacted by the authority aforesaid, That the said railway shall be deemed and taken as a public highway; and it shall and may be lawful for the said company or such persons as they may from time to time appoint toll collectors or their deputies, so soon as the railroad shall be perfected to collect and receive by toll upon the said railroad a sum not exceed-
72 ing twelve per centum per annum upon the amount of moneys which shall have been expended in the construction of the said railroads and other devices and in the support, improvement, and continuance of the same and to prescribe the form and kind of carriages, wagons, and conveyances to be used thereon for the transportation of persons or commodities.

73 EXHIBIT D.

Governor's License to Receive and Collect Toll.

PENNSYLVANIA, *ss:*

In the name and by the authority of the Commonwealth of Pennsylvania, J. Andrew Shulze, governor of the said Commonwealth, to all to whom these presents shall come sends greeting:

Whereas commissioners were appointed by me on the thirteenth day of October last to view and examine the work done by the president and managers of the company for improving the navigation of the river Lackawaxen, upon the notification of the said company that they had completed a canal navigation along the said river Lackawaxen, agreeably to the provisions of the act of the General Assembly passed the thirteenth day of March, in the year one thousand eight hundred and twenty-three, and other subsequent acts of the General Assembly relating thereto; and whereas Amizi Fuller, Jonothan Brink, and Thomas Mumford, the commissioners appointed as aforesaid, have reported to me, in writing, under their respective hands and seals and on their oaths, that they have examined the work constructed by the said president, managers, and company between Dyberry forks, in Wayne county, and the Delaware river, at the junction of the Lackawaxen river, in the county of Pike, and that they have found that the said president, managers, and company have constructed in a complete, substantial, and workmanlike manner, and according to the true intent and meaning of the said act of the General Assembly of the thirteenth day of March, one thousand eight hundred and
74 twenty-three, and the several supplements thereto, a canal now ready for navigation along the shore of the said Lackawaxen river, a distance of twenty-four miles and a half, or thereabouts, with thirty-seven lift-locks, and one guard and lift lock; and the said president, managers, and company, for the purpose of supplying the canal with water, have erected two dams across the main channel of the Lackawaxen and one dam across the west branch of the said river, all of which are provided with proper slopes and aprons, agreeably to the provisions of the several acts aforesaid, and, in the opinion of the commissioners, create no obstruction to the ordinary rafting business on the Lackawaxen river:

Now, know ye that, in pursuance of the directions and authority in the said recited acts of the General Assembly contained, I, the said J. Andrew Shulze, governor of the said Commonwealth, do hereby permit, license, and suffer the said president, managers, and company, or such person or persons as they shall from time to time appoint as toll collectors or their deputies, to demand and receive of and from the person or persons having charge of any boat, vessel, ark, craft, or raft passing through any lock in said navigation such

tolls and rates as are given and granted to the said company in and by the said several acts of the General Assembly, under and subject to the provisions, restrictions, and exceptions therein mentioned and contained.

Given under my hand and the great seal of the State, at
75 Harrisburgh, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and twenty-eight, and of the Commonwealth the fifty-third.

By the governor:

O. BLYTHE,
Secretary of the Commonwealth.

76 [Endorsed:] Case No. 15148. Supreme court U. S., October term, 1894. Term No., 452. The Delaware and Hudson Canal Co., pl'ff in error, *vs.* The Commonwealth of Pennsylvania. Stipulation and addition to record. Filed Oct. 20, '94.

[Endorsed:] Commonwealth of Pennsylvania *vs.* Delaware & Hudson Canal Company. Transcript.

Endorsed on cover: Case No. 15,148. Pennsylvania supreme court. Term No., 452. The Delaware and Hudson Canal Company, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed September 29, 1892.

156-200

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CLERK.

156-200

IN THE

Supreme Court of the United States.

No. 452, OCTOBER TERM, 1894.

Delaware and Hudson Canal Company,
Plaintiff in Error,

vs.

Commonwealth of Pennsylvania.

In Error to Supreme Court of Pennsylvania.

PAPER BOOK OF PLAINTIFF IN ERROR.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

In the

Supreme Court of the United States.

No. 452, OCTOBER TERM, 1894.

DELAWARE AND HUDSON CANAL COMPANY,
Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA.

In Error to the Supreme Court of the State of Pennsylvania.

Paper Book of Plaintiff in Error.

I. STATEMENT OF THE CASE.

The first section of the Pennsylvania statute of June 30, 1885, (P. L., 193), enacts "That all mortgages, money owing by solvent debtors, whether by promissory note, or penal or single bill, bond or judgment, . . . and all other moneyed capital in the hands of individual citizens of the State, shall be and are hereby taxable for State purposes, at the rate of three mills on the dollar of the value thereof annually." (This tax was re-imposed by the first section of the act of June 1, 1889, which, however, made no change in section 4 of the act of 1885, hereinafter referred to, and does not, therefore, require any consideration.) Bonds, mortgages, etc., issued by individuals, or by foreign corporations not doing business in the

State are, when owned by individual citizens of the State, required to be assessed at actual value in the hands of the holders by the local assessors in each tax district; but as to bonds and mortgages issued by corporations doing business in the State, a different method for the assessment and collection of the tax is provided in the fourth section, which, in its entirety, reads as follows:

"SECTION 4. That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond or certificate of indebtedness, issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt, and to report on oath, annually on the first Monday of November, to the Auditor General the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State Treasury within fifteen days after the thirty-first day of December in each year, and his compensation for his services shall be the same that city and borough treasurers receive for similiar services; and for every failure to assess and pay said tax and make report as aforesaid, the Auditor General shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation the bonds, certificates or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same."

The tax is imposed upon the holder of the bond, but the treasurer of the corporation, which issued it, is compelled to act as the agent or the officer of the Commonwealth for ascertaining the residence of the owner of the bond, the assessment of the bond, and for the collection of the tax by withholding it from the interest due to the bondholder.

The Delaware and Hudson Canal Company was chartered early in the present century by the State of New York, with authority, conferred by said State, to cut a canal between the

Delaware and Hudson rivers, to build certain railroads and to do various other things. It was the intention that its canal should terminate at a point in the State of New York not far from the mouth of the river Lackawaxen, which river is mostly in the State of Pennsylvania, but in the years 1825 to 1828, inclusive, it constructed certain improvements in the State of Pennsylvania under the following circumstances, viz:

By an act of Assembly, passed March 13, 1823, entitled "An act to improve the navigation of the river Lackawaxen," the State of Pennsylvania had conferred upon Maurice Wurts, his heirs, or assigns, authority to make certain much-needed improvements in the river Lackawaxen, for the purpose of making it navigable, with authority to charge toll for the use of the said improvements, which were intended to enable the citizens of Wayne and Pike counties, Pennsylvania, to reach with their freight the Delaware and Hudson canal, and thus avail themselves of its advantages. But Wurts, and those interested with him, being unable to construct the necessary improvements, the citizens of Wayne and Pike counties, in which the said improvements were to be made, petitioned the Legislature, which, in pursuance of their said petition, did, on the first of April, 1825, pass an act entitled "A supplement to an act entitled 'An act to improve the navigation of the river Lackawaxen,'" the preamble to said supplement is as follows, viz:

"WHEREAS, By an act entitled 'An act to improve the navigation of the river Lackawaxen,' Maurice Wurts, his heirs or assigns, is authorized to improve the navigation of the said stream; and whereas, by an act of the Legislature of the State of New York, a company has been incorporated, by the same of 'the president, managers and company of the Delaware and Hudson Canal Company,' to make a canal from the Hudson to the Delaware river, terminating at a point near the mouth of the Lackawaxen; and whereas, the stock in the said company having been jointly subscribed by the citizens of the two States, and the improvements authorized by the said acts being essentially connected with each other, the citizens of Wayne and Pike counties have, by petition, represented to the

Legislature that *it is desirable that those engaged in the improvement of the Lackawaxen should be able to avail themselves of the assistance of the Delaware and Hudson Canal Company, and pray the Legislature to grant the necessary Legislative facilities for that purpose;* therefore be it enacted, &c."

In this supplement it was provided that, with the consent of Wurts, his heirs and assigns, it should be lawful for the canal company to improve the river Lackawaxen in the manner authorized and provided by the aforesaid act of 1823, the canal company to have in respect of said improvements all the rights formerly conferred upon Wurts, subject, however, to all the provisions, conditions, restrictions, duties and obligations imposed by the act of 1823, upon Wurts, and also subject to the further provisions, conditions and limitations provided in the said act of 1825. The further supplement to the act of 1823, passed Feb'y 9, 1826, provided that if the canal company should reduce its locks below a certain standard, then it should not be lawful for it to make a slack-water navigation in the bed of the river Lackawaxen, but that in lieu thereof it might construct a canal navigation to be fed by the waters of the Lackawaxen or some of its branches. This supplement made careful provision for the payment by the canal company for damages for injury done to property in the construction of its canal, and also the condition that the company should yearly make complete reports to the Legislature of Pennsylvania of the amount of tolls collected, the dividends declared by the company within the year and the profits reserved as a contingent or surplus fund, and upon their refusal or neglect to make such reports, the rights and privileges granted should be declared null and void. It also provided, as a condition, that the water taken out of the river Lackawaxen, or any of its branches, to feed the canal should be passed into the Delaware river at or near the mouth of the river Lackawaxen.

By a still further supplement, passed April 5, 1826, the canal company was authorized to construct and maintain "such railways or other devices as may be found necessary to provide for and facilitate the transportation of coal to the canal.' Provided, however, that no such railway shall extend furthre

than from certain coal beds to certain points named on the Lackawaxen river or its branches. This supplement also made careful provision for the payment of damages, limited the rate of toll to be charged for the use of the railroad, &c. Finally, the company having notified the Governor of Pennsylvania of the completion of its works, he did, on the 13th of October, 1828, appoint a committee to inspect the same, who reported to him under oath that they found the said works to be constructed as required in the aforesaid statutes, and thereupon the Governor of Pennsylvania did, on the 24th of October, 1828, issue, as required by one of the aforesaid acts, his license authorizing the said company to demand and receive tolls and rates as given and granted by the above cited acts, subject to the provisions, restrictions and exceptions therein contained, and since that date the canal company has regularly and continuously owned and operated the said improvements.

By the aforesaid act of April 1, 1825, it was provided "that the property of the said company, whether real or personal, within this State, shall, at all times, be liable for its debts and subject to taxation, in like manner as similar property held by an individual or by a corporation, now is or may be," and such taxes the company has at all times from 1828 to the present date regularly and promptly paid.

Prior to the year 1885 the canal company did, in pursuance of authority conferred upon it by the New York statutes which constitute its charter, issue mortgages to the amount of $15,378,000. The bonds secured by these mortgages were issued and sold by the company in the State of New York to non-residents of Pennsylvania. By the terms of the bonds, and of the mortgages securing them, the principal and interest was, and is, payable in the city and State of New York at the general office of the company, and the interest has there at all times been paid by the treasurer of the company, who is a resident of the State of New York. They are all coupon bonds and neither bonds, coupons nor mortgages contain any provision for withholding any State tax or for any deduction whatever and in paying the interest which accrued on said

bonds in the year 1890, the treasurer of the company did not assess and deduct for the State of Pennsylvania any tax but paid the interest coupons in full.

Although originally issued to residents of New York, it appeared that in the year 1890 $219,000 of said bonds were owned by residents of Pennsylvania. The Auditor General and State Treasurer of said State thereupon settled an account against the company for $624.15, being a tax of three mills upon the said bonds, less a commission of $32.85, which tax was claimed to be due from said company under the above cited fourth section of the act of 1885. From this account, as permitted by the laws of Pennsylvania, the company appealed to the Court of Common Pleas of Dauphin county, which court, sustaining the claim, entered judgment against the company, from which an appeal was entered to the Supreme Court of Pennsylvania, by which tribunal the judgment of the trial court was affirmed, whereupon this writ of error was taken.

Among the propositions formally presented to, and overruled by, the Court of Common Pleas of Dauphin County and the Supreme Court of Pennsylvania, were the following:

That as the act of 1885 imposes the duty of assessing and collecting the tax upon the treasurer of the corporation, there is no authority of law for the demand made upon the corporation itself.

That it is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the State of New York, or upon its treasurer, being a resident of said State, the duty of ascertaining the residence of the owners, and of assessing and collecting in said State a tax upon bonds and mortgages issued, pursuance of the laws of New York, sold and delivered in said State of New York, nor to hold the company or its treasurer responsible for failure to so assess and deduct the same from interest paid upon said bonds and mortgages in the city and State of New York, and therefore, the act of June 30, 1885, if construed to authorize the claim in question, is void, because in violation of a necessary implication of the Constitution of the United States, which confine

the power of each State to subjects within its territorial sovereignty, and by reason of which all subjects over which the sovereign power does not extend, are exempt from taxation, regulation or control by said State.

That by imposing upon the company conditions not contained in the legislation of Pennsylvania in pursuance of which the railroad of the company was constructed through a portion of said State, it impairs the obligation of the contract contained in said legislation.

That the act of 1885, by requiring the withholding of a portion of the interest due to the holders of bonds issued by the company, impairs the obligation of the contract between the company and its bondholders, and is, therefore, in conflict with section 10 of Article I. of the Constitution of the United States.

That by compelling the company to withhold a portion of the interest due upon its bonds, it impairs the obligation of the charter contract between the company and the State of New York in pursuance of which said bonds were issued.

That an interest coupon, when detached from a bond, is a separate and distinct contract, and that by compelling the company to withhold from the amount due upon the coupon presented by one person, a tax due upon the bond from which said coupon had been detached, said bond belonging to a different person, the act impairs the obligation of the contract between the corporation and the holder of the coupon, and is, therefore, in conflict with section 10 of Article I. of the Constitution of the United States.

That the business of the company, so far as Pennsylvania is concerned, consisting chiefly of the transportation of freight and passengers into, out of, or through said State, the act of June 30, 1885, is unconstitutional and void as attempting to regulate or impose conditions upon the transaction of such inter-State business.

That the tax sought to be imposed upon the holders of bonds under the act of 1885 is in violation of section 1 of Article XIV. of the Amendments to the Constitution, and its collec-

tion cannot therefore be enforced, either against the bondholders or the corporation.

No opinion was written in this case by the Supreme Court, but the judgment was "affirmed upon the opinion of the learned judge of the court below," which opinion of the court below, so far as the liability of this foreign corporation is concerned, was rested entirely upon the opinion of the Supreme Court in *Com.* vs. *New York, Lake Erie & Western R. R. Co.*, *129 Pa.*, *463*, to which reference must be made for the reasons upon which the judgment in this case is based. For convenience of reference the syllabus of that case and the opinion of the Court, as they appear in the Pennsylvania State Reports, are printed in full, commencing on the next page hereof.

COM. *v.* N. Y., L. E. & WESTERN R. R. CO., 129 PA., 463.

SYLLABUS OF THE CASE.

1. Section 4, act of June 30, 1885, P. L. 193, requiring corporations, upon the payment of interest upon their corporate indebtedness, to deduct and return the State tax imposed, applies not only to domestic corporations, but to foreign corporations doing business in this State.

2. A corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as the latter may impose, not unconstitutional in character and effect and inconsistent with jurisdictional authority.

3. It is competent for the Legislature of Pennsylvania to impose upon foreign corporations doing business in this State the duty, upon the payment of interest upon their corporate bonds held by resident holders, to deduct and return the State tax imposed by section 4, act of June 30, 1885, P. L. 193.

4 The New York, L. E. & W. R. Co. is not relieved from this duty to collect and return said tax, or from liability therefor upon failure to perform such duty, by anything authorized, conferred, or required in the acts of February 16, 1841, P. L. 28, and March 26, 1846, P. L. 179.

5. Other questions, relating to the constitutionality, etc., of said act of June 30, 1885, P. L. 193, are ruled by *Commonwealth* vs. *Delaware Div. Canal Co., 123 Pa., 594*, and the appeals in *Commonwealth* vs. *Lehigh V. R. Co., ante, 429.*

OPINION OF SUPREME COURT OF PENNSYLVANIA.

Mr. Justice Clark:

This case came into the Common Pleas of Dauphin county upon an appeal from a settlement made by the Auditor General, etc., for State taxes on corporate loans, under the fourth section of the act of June 30, 1885, for the year 1887. It was tried by the court by agreement of the parties under the act of 1874. The learned judge of the court below found as matter of fact that $2,378,000 of the company's bonds were owned and possessed by residents of Pennsylvania, of which

$852,000 were held by individuals, and the residue by corporations. The principal questions raised on this record are ruled by *Commonwealth* v. *Delaware Div. Canal Co.*, *123 Pa.*, *594*; *Lehigh Valley R. Co.* v. *Commonwealth*, and *Commonwealth* v. *Lehigh Valley R. Co.*, the last two cases decided at this term and not yet reported (*ante 429*). The only remaining question for our consideration is, whether or not the defendant company, being a foreign corporation, is liable to be charged with State taxes at the rate of three mills on the dollar on their bonds held by individuals and firms resident within the State as above stated.

The New York, Lake Erie and Western Railroad Company is a corporation of the State of New York. It was originally incorporated in the year 1832, as the New York and Erie Railroad Company, with power to construct a railroad from the city of New York to Lake Erie, through the southern counties of the State of New York. To avoid certain engineering difficulties, the company was afterwards authorized by the Legislature of Pennsylvania, under certain restrictions, to build a specific portion of its road through the counties of Pike and Susquehanna, in this State; Acts of February 16, 1841, P. L. 28, and March 26, 1846, P. L. 179; the said company, by the act of 1846, being required to pay to the State of Pennsylvania, after the completion of the road, the sum of $10,000 annually. The property and franchises of the New York and Erie Railroad Company afterwards became vested in the Erie Railway Company, and, in 1878, in the New York, Erie and Western Railroad Company. A portion of the defendant's road was made and is still maintained within the limits of this State, and since the completion and equipment of the road regular payment has been made by the company to the Commonwealth of the said sum of $10,000 annually, pursuant to the provisions of the several acts of Assembly already referred to. Although a corporation of another State, and, therefore, a foreign corporation, the company is doing business in this State. By a certificate filed in the office of the Secretary of the Commonwealth, pursuant to the act of 22d April, 1874, the defendants have designated a place

of business and an agent to represent them ; they are, therefore, not only duly authorized but, in the operation of their road, they are actually engaged in doing business within the limits of this State.

The fourth section of the act of 1885 applies not only to all private corporations, created by and under the laws of this State or of the United States, but to such as are doing business in this Commonwealth. The several questions raised by the assignments of error, from the first to the ninth, inclusive, as we have already said, have been discussed and decided in the case of *Commonwealth* v. *Delaware Div. Canal Company*, *123 Pa., 594*, and the case of *Commonwealth* v. *The Lehigh Valley Railroad Company*, argued at the present term, (ante, 429), and will not be further considered here.

The only question raised by the remaining assignments are, first, whether the provision of the fourth section of the act of 1885, so far as it applies to foreign corporations doing business in this State, is a proper exercise of legislative power; and, second, assuming this to be so, whether there is anything in the said provision, by which the defendant road was permitted to pass through the counties of Pike and Susquehanna, which would exempt the company from the obligation of this act.

Upon the first question suggested there can, we think, be but little room for discussion. In the Delaware Div. Canal Company case, already referred to, we said :

"Foreign corporations, exercising their franchises under the laws of other States and countries, are beyond the reach of our process of taxation. We could not require them ordinarily to comply with any such regulation of our law, and, therefore, they are necessarily excluded from the provisions of the act. Such foreign corporations as are engaged in business in the State might, doubtless, be required to comply as a condition of their right so to do, but this could only embarrass the action of the local assessor, and upon this ground, doubtless, they were wisely excluded from the operation of the act."

The last member of the concluding sentence of the paragraph quoted is a mere inadvertance. The fourth section of the act of 1885 does in terms embrace such foreign corpor-

ations as are engaged in business in this State, and the question now to be considered is, whether or not such a provision as respects the New York, Lake Erie and Western Railroad Company is a proper exercise of the legislative power of the State. The general statement that foreign corporations are ordinarily beyond the reach of our processes of taxation is undoubtedly correct, but when a foreign corporation comes into Pennsylvania and engages in business here, undoubtedly it does so subject to the general policy of, and the course of legislation in, the State. *Runyon* v. *Coster*, *14 Pet.*, *122*. A foreign corporation can exercise its franchises in Pennsylvania only so far as it may be permitted by the local sovereign. The right rests wholly in the comity of the States. *Paul* v. *Virginia*, *8 Wall.*, *168*. A corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as the latter may think proper to impose. *St. Clair* v. *Cox*, *106 U. S.*, *350*. These conditions will be valid and effectual, provided they are not repugnant to the constitution or laws of the United States, inconsistent with the jurisdictional authority of the State, or in conflict with the rule which forbids condemnation without opportunity for defense. *Lafayette Insurance Co.* v. *French*, *18 How.*, *404*; *Doyle* v. *Insurance Co.*, *94 U. S.*, *535*; *Pembina Mining Co.* v. *Pennsylvania*, *125 U. S.*, *181*.

It was competent for the Legislature of Pennsylvania to impose as a condition upon foreign corporations doing business in this State that they shall assess and collect the tax upon that portion of their loans in the hands of individuals resident within this State, and otherwise comply with the provisions of the act of 1885. The act imposes no tax upon the company; it simply defines a duty to be performed and fixes a penalty for disregard of that duty. The Legislature having so provided, compliance with the act may, in some sense, be said to form one of the conditions upon which corporations may do business within the State, and the corporation continuing its business subsequently would be taken to have assented thereto.

There is, however, a condition, implied even in the case of domestic corporations, that they will be subject to such reasonable regulations, in respect to the general conduct of their affairs, as the Legislature may, from time to time, prescribe, and such as do not materially interfere with or obstruct the substantial enjoyment of the privileges the State has granted: *Chicago* v. *Needles, 113 U. S., 574.* If this be so as to corporations who are entitled to their charter privileges upon the footing of a contract, how much the more is it so as to corporations who are merely permitted by the Legislature to do business within this State as a matter of grace and not of right? But it is said that the enforcement of the fourth section of the act of 1885 against the defendant corporation would impair the obligation of the contract existing between the Commonwealth and the company, as set forth in the private statutes of 1841 and 1846 already referred to. Apart from these statutes the defendant had the right by the comity of the States to contract and to sue within the State of Pennsylvania, but could exercise no extraordinary franchises or special privileges granted by the State incorporating it, as, for instance, the right to eminent domain, or the privilege of exemption from taxation: *State* v. *Boston, etc., R. Co., 25 Vt., 433; Middle Bridge Co.* v. *Marks, 26 Me., 326; Taylor on Corp., 386.* It was for the exercise of this extraordinary privilege and power of the State the annual payment of $10,000 was stipulated. There is nothing in the act to indicate that this sum was paid in lieu of taxes, or for exemption from any duty which might otherwise be imposed upon the company, but for the privilege of exercising the right of eminent domain in the location of their road through the counties mentioned, under restrictions particularly specified. The effect of these acts of 1841 and 1846 was not to declare the company a corporation of the Commonwealth, but, as Mr. Justice Thompson said in *New York & Erie R. Co.* v. *Young, 33 Pa., 175*, "for the purposes of these acts the rights involved are to be tested and judged by the same rules of law as if the company had been primarily incorporated by this Commonwealth. So far as the road runs through this State under the privileges granted to

it, the company is a *quasi* Pennsylvania corporation. The right of eminent domain, within the restrictions of the grant, was as fully conferred on them by the act of February 16, 1841, as it ever is conferred on corporations exclusively within the State, and their rights and duties under the privileges granted must be ruled by the same principles." One State may make a corporation of another State, as there organized and conducted, a corporation of its own, *quoad* property within its territorial jurisdiction: *Railroad Co.* v. *Harris*, 12 *Wall.*, 65–82; *Graham* v. *Railroad Co.*, 1 *W. N. C.*, 40. Thus it will be seen that the defendant exercises powers and franchises which they have received directly from the legislation of Pennsylvania; that a part of their property is actually within the limits of this State, and receives the protection of our laws, and there is no good reason why the company should not be held subject to the same regulations as corporations of our own State. We are of opinion that on this branch of the case the Court was right.

The judgment is affirmed.

II. ASSIGNMENT OF ERRORS.

(Note.—The first, second and third assignments need not be considered.)

(1.) The learned Court erred in not sustaining the company's ninth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the third specification of objection contained in defendant's appeal; which specification was as follows, viz:

'If the act of June 30, 1885, or the act of June 1, 1889, requires that the company, or the treasurer thereof, when paying interest to its creditors, shall retain from them a so-called tax upon bonds which had not been assessed and valued by lawful authority, or makes the company or the treasurer thereof liable unto the Commonwealth for failure to collect said so-called tax, then the said act is unconstitutional and void, because in conflict with Article V. of the amendments to the Constitution of the United States, which provides that 'no person shall be . . . . . deprived of life, liberty, or property without due process of law;' and also because in conflict with section 1 of Article XIV. of the Amendments to the Constitution of the United States.'"

(2.) The learned Court erred in not sustaining the company's tenth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the fifth specification of objection contained in defendant's appeal, as follows, viz:

'If the acts of June 30, 1885, and June 1, 1889, do not require an assessment or valuation of bonds and mortgages owing by corporations, but require the treasurers of corporations to calculate the tax at three mills upon the nominal, regardless of the real, value of said bonds and mortgages, which bonds and mortgages, as in the case of this corporation, differ in real and market values and to retain the tax so calcu-

lated from the interest paid to the holders of said bonds and mortgages, then the said acts are in conflict with section 1 of Article IX. of the Constitution of Pennsylvania, which requires that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' For the same reason the acts are also void, because in conflict with section 1 of Article XIV. of the Amendments to the Constitution of the United States.'"

(3.) The learned Court erred in not sustaining the company's eleventh exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the sixth specification of objection contained in defendant's appeal, as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, and other acts of assembly relating to the taxation of moneys at interest, require that bonds and mortgages owing by natural persons, and shares of stock in banks and other corporations, shall be taxed at their actual value. If the said acts, or any of them, require that bonds and mortgages owing by corporations shall be taxed in a different manner, that is to say, upon their nominal, regardless of their real, value, then the said act or acts are void, because in conflict with section 1 of Article XIV. of the Amendments to the Constitution of the United States.'"

(4.) The learned Court erred in not sustaining the company's twelfth exception to the decision of the Court of Common Pleas of Dauphin County, which exception was as follows, viz:

"The learned Court erred in not sustaining the seventh specification of objection contained in defendant's appeal, which specification was as follows, viz:

'The acts of June 30, 1885, and June 1, 1889, in so far as they require the company appellant, or the treasurer thereof, to deduct from the interest due its bondholders a tax which has not been lawfully assessed, impair the obligation of the contract between the said company and its creditors, and are void, because in conflict with section 10 of Article I. of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts.'"

(5.) The learned Court erred in not sustaining the company's thirteenth exception to the decision of the Court of Common Pleas of Dauphin County, which exception was as follows, viz:

"The learned Court erred in not sustaining the eighth specification of objection contained in defendant's appeal, which was as follows, viz:

'Neither the charter granted to the corporation appellant by the State of New York, nor the legislation under which it owns property and does business in Pennsylvania, requires or permits the said corporation to act as collector of the State taxes, and so much of the acts of June 30, 1885, and June 1, 1889, as imposes upon it additional burdens by requiring it to collect, or become responsible for, the taxes due by other corporations and individuals, its creditors, is in violation of section 10 of Article I of the Constitution of the United States, which forbids any State passing any law impairing the obligation of contracts, and is, therefore, void.'"

(6.) The learned Court erred in not sustaining the company's fourteenth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the ninth specification of objection in defendant's appeal, which was as follows, viz:

'All of the indebtedness of the corporation appellant is evidenced by bonds which have attached to them coupons representing the interest from time to time accruing, which coupons are payable to bearer and are detachable from said bonds, and are separate and distinct contracts, possessing all the attributes of commercial paper, the title to which passes by delivery, and the same may be owned, and often are owned, when presented for payment, by persons other than those who own the bonds to which they were originally attached; and if the act of June 30, 1885, or the act of June 1, 1889, requires the company to withhold from persons owning and presenting the coupons a tax due upon bonds owned by other persons, then the said act impairs the obligation of the contract between the company and the owner of the coupon, and is in conflict with section 10 of Article I. of the Constitution of the United States, and is, therefore, void.'"

(7.) The learned Court erred in not sustaining the company's fifteenth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the tenth specification of objection contained in defendant's appeal, which was as follows, viz:

'The Delaware and Hudson Canal Company is not a corporation of the State of Pennsylvania, but is a corporation of, and located in the State of New York, having its principal office and place of business in the city of New York, in said State, from which State alone it derives its corporate existence, and in which State, namely, in the city of New York, all of its bonded indebtedness was contracted, and the bonds actually issued and sold and are payable, principle and interest; and the said interest is there actually paid to persons there doing business. The said company has no right under its charter to assume the duties of an assessor or collector of taxes for the State of Pennsylvania; neither is it competent or legal for the State to impose such duties upon said company. And if the acts of June 30, 1885, and June 1, 1889, or either of them, require that this company, or the treasurer thereof, shall, in paying interest in the State of New York, retain any part of the interest stipulated to be paid to the holders of its bonds, they impair the obligation of the charter contract between the State of New York and the said company and also the obligation of the contract between said company and the owners of its bonds, and are, therefore, void because repugnant to paragraph 1 of section 10 of Article I. of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.'"

(8.) The learned Court erred in not sustaining the company's sixteenth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned court erred in not sustaining the eleventh specification of objection contained in defendant's appeal, which was as follows, viz:

"It is not within the constitutional authority of the State of Pennsylvania to impose upon a corporation of the

State of New York, or upon its treasurer, being a resident of New York, the duty of assessing in the State of New York a tax upon bonds and mortgages issued and sold in the State of New York, upon the payment of interest made in the city of New York not to hold the said company nor its treasurer responsible for failure so to assess and deduct the sale from interest paid upon said bonds and mortgages in the city and State of New York; and the acts of June 30, 1885, and June 1, 1889, if they, or either of them, shall be construed to authorize the account settled by the Auditor General in this case, or any part thereof, are void because in violation of a necessary implication of the Constitution of the United States, which confines the power of each State to the taxation of subject within its territorial sovereignty and by reason of which all subjects over which the sovereign power of a State does not extend are exempt from taxation or control by said State.'"

(9.) The learned Court erred in not sustaining the company's seventeenth exception to the decision of the Court of Common Pleas of Dauphin County; which exception was as follows, viz:

"The learned Court erred in not sustaining the twelfth specification of objection contained in defendant's appeal, which was as follows, viz:

'In so far as they apply to the Delaware and Hudson Canal Company, the fourth section of the act of June 30, 1885, and the first section of the act of June 1, 1889, are unconstiutional and void because in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

(10.) The learned Court erred in affirming the judgment of the Court of Common Pleas of Dauphin County in favor of the Commonwealth of Pennsylvania and against the Delaware and Hudson Canal Company.

(11.) The learned Court erred in not reversing the judgment of the Court of Common Pleas of Dauphin County.

III. ARGUMENT OF PLAINTIFF IN ERROR.

By agreement of the parties, under the Pennsylvania Statute of April 22, 1874 (P. L. 109), this case was heard by the Court of Common Pleas of Dauphin county without the intervention of a jury, the Court finding the facts as well as the law. The facts thus found by the trial court are conclusive and final.

"Where a cause is submitted to the decision of the Court below without a jury, under the act of April 22, 1874, the findings of fact under such a submission are no more reviewable by the Supreme Court than is the verdict of a jury." *Com.* v. *Westinghouse El. & Mfg. Co., 151 Pa., 265.*

See also—

Jamison v. *Collins, 83 Pa., 359.*
Lee v. *Keys, 88 Pa., 175.*
Brown v. *Dempsey, 95 Pa., 243.*
Com. v. *Lehigh Valley R. R. Co., 104 Pa., 89–97.*
Bradlee v. *Whitney, 108 Pa., 362.*
R. R. Co. v. *Moyer, 125 Pa., 506.*
Com. v. *Hulings, 129 Pa., 317.*

The facts thus found by Judge Simonton, the learned President of the trial court, in his opinion filed, were as follows (Record, p. 11–12):

"1. The Delaware and Hudson Canal Company is a corporation chartered early in the present century by the State of New York, having, by various statutes of that State, authority to cut a canal between the Delaware and Hudson rivers, and to build certain railroads, and to do various other things; the principal purpose being to enable it to supply the New York market with what is therein described as "stone coal," now better known as anthracite coal, from the Pennsylvania coal region. Its chief office and treasury are in the city of New York. Its treasurer and other principal officers are, all of them, residents of said city. It has com-

plied with the requirements of the act of April 22d, 1874 (P. L., 108), and obtained from the Secretary of the Commonwealth the required certificate.

"2. By certain Pennsylvania statutes the company acquired the privilege of extending its canal into Pennsylvania and constructing and maintaining certain railways and such other devices as may be found necessary to provide for and facilitate the transportation of coal to the canal, and to do certain other things therein specified.

"3. Since the year 1825 the company has been doing business in Pennsylvania in pursuance of authority of the statutes above mentioned.

"4. So far as the State of Pennsylvania is concerned, the canal and railroads of the company defendant are used chiefly in the transportation of anthracite coal from Pennsylvania into other States.

"5. In the fifth section of the act of April 1, 1825 (P. L. 141), which is one of the acts authorizing the company to do business in Pennsylvania, it is provided 'That the property of the said company, whether real or personal, within this State, shall at all times be liable for its debts and subject to taxation in like manner as similiar property held by an individual or by a corporation now is or may be; and the said company shall, under oath or affirmation of the president and treasurer, report to the Legislature, when required so to do, the amount of capital which it may have invested within this State, under pain of forfeiting the rights and privileges hereby granted for neglecting or refusing so to do; and, moreover, the State of Pennsylvania shall, at all times, by its agent or attorney duly appointed, have a right to examine the books, accounts and vouchers of the said company in relation to such reports.' Such taxes have been regularly paid and there is no other provision or requirement upon the subject of taxation to be found in any of the special statutes in pursuance of which the works of the company were constructed in this State. Neither those statutes nor the New York statutes, which constitute the charter of the company, contain any provision requiring it to collect and be responsible for any tax upon bonds and mortgages issued by it, whether held by residents of Pennsylvania or otherwise, nor requiring it to deduct any Pennsylvania State tax from interest paid upon such mortgages; but the said statutes are, all of them, entirely silent upon that subject.

"6. In pursuance of authority contained in the New York statutes, which constitute its charter, the company has heretofore issued mortgages to the amount of $15,378,000. The bonds secured by them were originally issued and sold in the State of New York to non-residents of Pennsylvania; but, in the year 1890, bonds to the amount of $219,000 were held and owned by individuals residing in Pennsylvania. By the terms of the bonds and the mortgages whereby they are secured, the principal and interest is payable in the city and State of New York at the general office of the company; and the interest is, and was, in 1890, there paid by the treasurer of the company, who is a resident of the State of New York. The said bonds were all issued prior to the year 1885. They are all coupon bonds. Neither bond, nor coupon, nor mortgage, contains any provision for the withholding from the interest of any State tax, or for any deduction whatever from the interest required by the terms of said mortgage, bonds and coupons to be paid.

"7. On the tenth of June, 1891, the Auditor General of Pennsylvania settled and entered, and the State Treasurer approved, an account against the company for $624.15, being the tax for the year 1890, charged at three mills upon the nominal value of the $219,000 of bonds held and owned by residents of Pennsylvania, as aforesaid, less a commission of $32.85, which tax is claimed to be due from said company to the Commonwealth under section 4 of the act of June 30, 1885, and section 1 of the act of June 1, 1889. From this settlement of its account the company duly appealed to this Court.

"8. In paying interest upon its bonds in 1890, the company did not, neither did its treasurer, withhold therefrom any Pennsylvania State tax, as required by section 4 of the act of June 30, 1885.

"9. Bonds and mortgages issued by individuals; and also, when owned by residents of Pennsylvania, those issued by foreign corporations not doing business in the State, are assessed and taxed for State purposes in the hands of the owners in the taxing districts in which they reside at their actual value in cash for which they would separately and *bona fide* sell."

The Commonwealth of Pennsylvania claims that upon this state of facts the Delaware and Hudson Canal Company

is liable for a tax of three mills upon the $219,000 of bonds found by the Court to have been owned by residents of Pennsylvania in 1890, said liability being based upon the fourth section of the Pennsylvania statute of June 30, 1885, P. L. 193, which reads as follows, viz:

"SECTION 4. That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond or certificate of indebtedness, issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt, and to report on oath, annually on the first Monday of November, to the Auditor General, the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State treasury within fifteen days after the thirty-first day of December in each year; and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax and make report as aforesaid, the Auditor General shall add ten per centum as a penalty to the amount of the tax; in payment of said tax by a corporation the bonds, certificates or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same.'

The tax claimed is not one upon the property of the company, but upon the property of its creditors. The treasurer of the company is commanded by the statute to collect that tax from the company's creditors by deducting it from the interest due them. The character of the liability now sought to be imposed upon the company is clearly defined in the opinion of the trial judge (Record, p. 13) where quoting from the opinion of Mr. Justice Clark of the Supreme

Court in *Com.* vs. *Del. Div. Canal Co., 123 Pa., 593-618*, he says:

"The act constitutes the company, or its treasurer as such, the collector of the tax, and, upon failure to discharge the duty imposed by law, the settlement is properly made against the company whose servant he is, as in the case of the default of any other officer of the government upon whom a like duty is imposed. The obligation rests upon the company; but as the company can only act through its officers, the default of the officers is a scheme for the default of the company and the penalty is visited upon them."

This New York corporation is, therefore, charged with the amount of this tax as a penalty for the failure of its treasurer, a resident of the State of New York, to collect the same from the interest paid at the office of the company in the city of New York.

The objection urged in the trial Court to the imposition of these duties upon a foreign corporation, or its treasurer, were disposed of by the trial judge in this language:

"The competency of the Legislature of the State to impose upon foreign corporations doing business here the duty, upon payment of interest upon their corporate bonds held by resident holders, to deduct and return the State tax, was considered and affirmed in *Com.* vs. *N. Y., L. E. & W. R. R. Co., 129 Pa., 463*. We therefore overrule all the objections specified in defendant's appeal" (Record, p. 13).

The Supreme Court having affirmed the judgment upon the opinion of the trial judge, reference must be had to the opinion of the Supreme Court in the Erie case for the real reasons of the decision, which are thus substantially stated by Clark, J., who delivered the said opinion (See page 9 hereof).

"It was competent for the Legislature of Pennsylvania to impose as a condition upon foreign corporations doing business in this State that they shall assess and collect the tax

upon that portion of their loans in the hands of individuals resident within this State, and otherwise comply with the provisions of the act of 1885. The act imposes no tax upon the company; it simply defines a duty to be performed and fixes a penalty for disregard of that duty. The Legislature having so provided, compliance with the act may, in some sense, be said to form one of the conditions upon which corporations may do business within the State, and the corporation continuing its business subsequently would be taken to have assented thereto."

But the opinion of the Supreme Court in the Erie case has been the subject of review here, and after thorough and elaborate argument, squarely reversed, in *New York, Lake Erie & Western Railroad Co.* vs. *Pennsylvania, 153 U. S., 628*, where it was held by this Court, as stated in the syllabus:

"(1.) That the Commonwealth of Pennsylvania cannot, consistently, with the Constitution of the United States, impose upon the New York, Lake Erie and Western Railroad Company the duty, when paying *in the city of New York* the interest due upon scrip, bonds or certificates of indebtedness held by residents of Pennsylvania, of deducting from the interest so paid the amount assessed upon bond and moneyed capital in the hands of such residents of Pennsylvania.

"(2.) That the fourth section of the act of 1885, in its application to the New York, Lake Erie and Western Railroad Company, impairs the obligation of the contract originally made by the New York, Lake Erie and Western Railroad Company and the State of Pennsylvania, as disclosed by the acts of 1841 and 1846, and by what was done by the companies, upon the faith of those acts."

In the course of the very able, clear and exhaustive opinion of Mr. Justice Harlan, he said (p. 646):

"If Pennsylvania, in order to collect taxes assessed upon bonds issued by its own corporations and held by its resident citizens, could require those corporations to deduct the required amount from the interest when the coupons are presented by holders known at the time by the corporations paying the interest to be residents of that State—and it may

be admitted, in this case, that the State, if not restrained by a valid contract to which it was a party, could establish such a regulation—it does not follow that the State may impose upon foreign corporations, because of their doing business in that State with its permission given for a valuable consideration, any duty in respect to the mode in which they shall perform their obligations in other States.

"The New York, Lake Erie and Western Railroad Company is not subject to regulations established by Pennsylvania in respect to the mode in which it shall transact its business in the State of New York. The money in the hands of the company in New York to be applied by it in the payment of interest, which by the terms of the contract is payable in New York, and not elsewhere, is property beyond the jurisdiction of Pennsylvania, and Pennsylvania is without power to say how the corporation holding such money, in another State, shall apply it, and to inflict a penalty upon it for not applying it as directed by its statutes; especially may not Pennsylvania, directly or indirectly, interpose between the corporation and its creditors, and forbid it to perform its contract with creditors according to its terms and according to the law of the place of performance. No principle is better settled than that the power of a State, even its power of taxation, in respect to property, is limited to such as is within its jurisdiction."

The Erie company had constructed its improvements in Pennsylvania in pursuance of the Pennsylvania statutes of 1841 and 1846. The Delaware and Hudson company constructed its improvements in pursuance of authority contained in Pennsylvania statutes passed a quarter of a century earlier. The Erie company obtained legislation from Pennsylvania for its own convenience to avoid certain engineering difficulties and to lessen the expense of the construction of its road. The Delaware and Hudson company entered the State in pursuance of legislation passed upon the petition of citizens of the State to enable them to obtain the advantages of its assistance in important improvements which they had not the means to complete. In each case the Legislature prescribed fully, clearly and in detail, the

terms and conditions of such entry into the State. The Pennsylvania courts have treated the cases as identical in principle. No possible distinction can be drawn between them, and it is respectfully submitted that the decision of this Court in the Erie case requires the reversal of the Supreme Court of Pennsylvania in the case at bar.

M. E. OLMSTED,

Attorney for Delaware and Hudson Canal Company.

152-200

IN THE

Supreme Court of the United States.

No. 452, OCTOBER TERM, 1894.

Delaware and Hudson Canal Company,

Plaintiff in Error,

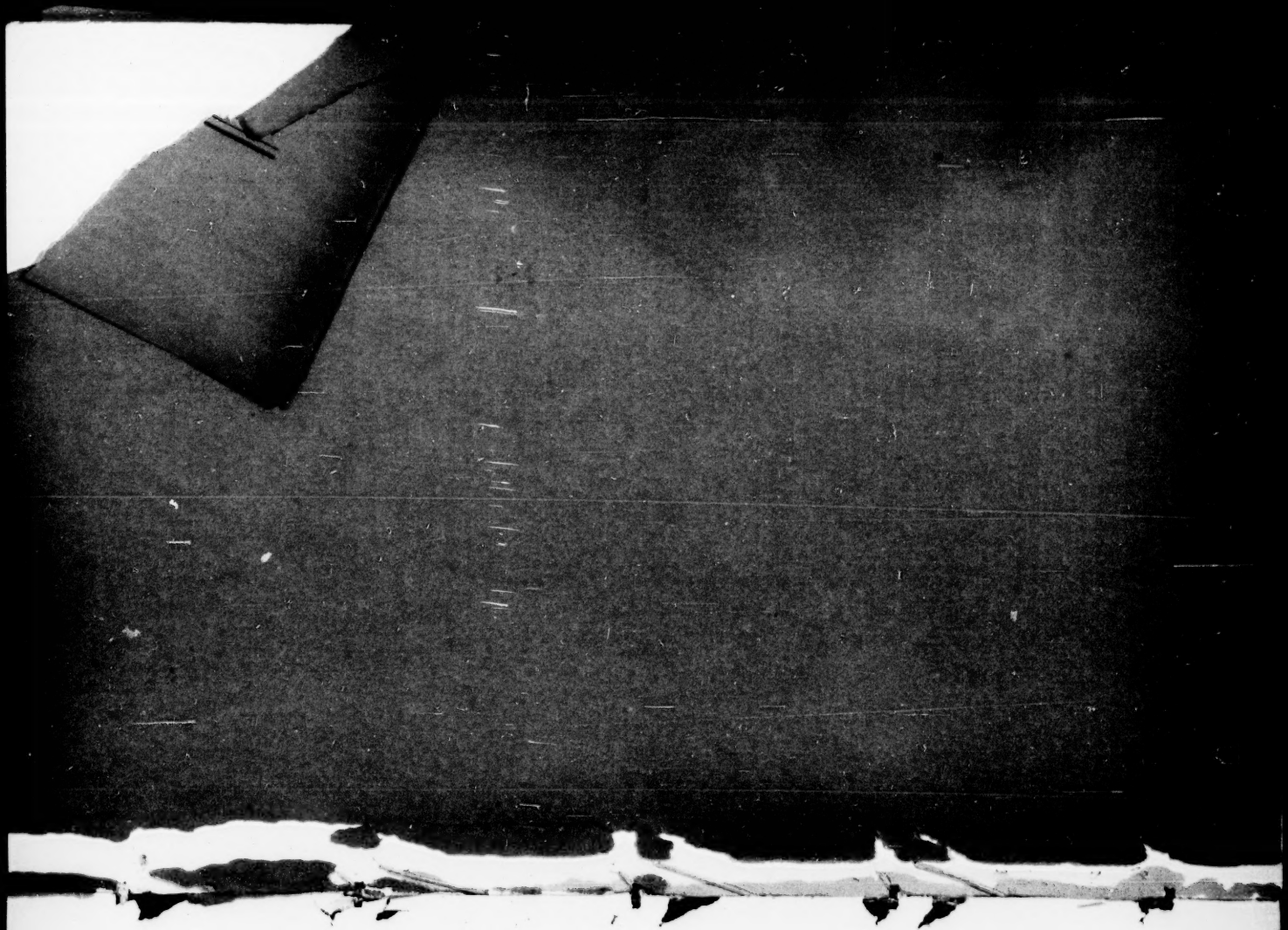
vs.

Commonwealth of Pennsylvania.

Error to Supreme Court of Pennsylvania.

PAPER BOOK OF DEFENDANT IN ERROR.

JAMES A. STRANAHAN,
Deputy Attorney General.
W. U. HENSEL,
Attorney General.



In the

Supreme Court of the United States.

No. 452, OCTOBER TERM, 1894.

Error to Supreme Court of Pennsylvania.

DELAWARE & HUDSON CANAL COMPANY,
Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA.

Tax on Loans

The Delaware and Hudson Canal Company was held liable in the trial Court, whose judgment was affirmed by the Supreme Court of Pennsylvania, for the amount of a tax of three mills upon bonds originally issued and sold by the company in the State of New York, but held in the year 1890 by residents of Pennsylvania. The tax was imposed upon the bondholders. The liability of the company was maintained because of the failure of its treasurer, when paying interest in the city of New York, to deduct therefrom the amount of the tax and pay the same into the State treasury of Pennsylvania. The company, which is a corporation of the State of New York, constructed a portion of

its improvements within the limits of Pennsylvania, in pursuance of certain statutes of that State defining the terms and conditions upon which they might be so constructed. In its original appeal and in its assignment of errors the company denies the authority of the State of Pennsylvania to impose upon it or its treasurer, when paying interest in New York, the duty of assessing and collecting this Pennsylvania State tax, and further urges that the imposition upon it of this duty as a further condition to its doing business in Pennsylvania works an impairment of the obligation of the contract contained in the original legislation in pursuance of which it entered the State and constructed its works. The assignments of error raise substantially the same questions as were presented to this Court in *New York, Lake Erie & Western Railroad Company* vs. *Commonwealth of Pennsylvania, 153 U. S., 628*. By reference to pages thirteen (13) and twenty-six (26) of the record, it will appear that in the trial Court and in the Supreme Court of Pennsylvania the two cases were considered identical in principle. It is conceded by the Commonwealth that there is no substantial distinction between them. The Erie case was thoroughly and fully discussed upon either side, and the Commonwealth of Pennsylvania having nothing further to add to its views as then presented respectfully submits the case at Bar for such action as to this honorable Court may seem proper.

JAMES A. STRANAHAN,
Deputy Attorney General.

W. U. HENSEL,
Attorney General.